

BOARD OF SANITARY COMMISSIONERS  
MUNCIE SANITARY DISTRICT

BOND RESOLUTION NO. 2013-31

A Resolution of the Board of Sanitary Commissioners of the Muncie Sanitary District concerning the acquisition, construction and installation of additions and improvements to the sewage works system of the Muncie Sanitary District; the issuance of revenue bonds to provide the cost thereof; the collection, segregation and distribution of the revenues of said sewage works system; the safeguarding of the interests of the owners of said revenue bonds; other matters connected therewith, including the issuance of notes in anticipation of bonds; and repealing resolutions inconsistent herewith

WHEREAS, the Board of Sanitary Commissioners (the "Board") of the Muncie Sanitary District (the "Sanitary District") of the City of Muncie, Indiana (the "City") has heretofore established, constructed and financed its sewage works, which sewage works includes the storm water systems of the Sanitary District, and now owns and operates said sewage works pursuant to Indiana Code 36-9-25, as in effect on the issue date of the bonds authorized herein, and other applicable laws (the "Act") (all references hereinafter to the Indiana Code are designated as "IC" followed by the applicable code section or sections); and

WHEREAS, the Board finds that certain additions and improvements to said works are necessary; that certain reports containing general plans, specifications, descriptions and estimates have been prepared and filed by the engineers employed by the Sanitary District for the acquisition, construction and installation of said additions and improvements (as more fully set forth in Exhibit A attached hereto and made a part hereof) (the "Project"), which plans and specifications have been or will be submitted to all governmental authorities having jurisdiction, particularly the Indiana Department of Environmental Management, and have been or will be approved by the aforesaid governmental authorities and are incorporated herein by reference and open for inspection at the office of the Board as required by law; and

WHEREAS, the Board finds that the Project will be undertaken by the Sanitary District pursuant to a Guaranteed Energy Savings Performance Contract (the "Energy Savings Contract") with Energy Systems Group, LLC, the qualified provider selected by the Board after duly advertised publication of request for qualifications, all in accordance with Indiana Code 36-1-12.5, as amended; and

WHEREAS, on October 31, 2013, the Board, being the governing body of the Sanitary District, adopted its Declaratory Resolution (the "Declaratory Resolution"), declaring that it is necessary for the public health and welfare and will be of public utility and benefit to acquire, construct and install the Project as more fully described in said Declaratory Resolution; and

WHEREAS, on November 14, 2013, after notice and public hearing thereon, the Board will consider adoption of its confirmatory resolution confirming the Declaratory Resolution (the "Confirmatory Resolution"); and

WHEREAS, based upon the terms of the Energy Savings Contract and the estimates of the Sanitary District's engineers, the cost of the Project, as defined in IC 36-9-1-8, including estimated incidental expenses, is in the estimated amount of Four Million Five Hundred Thousand Dollars (\$4,500,000); and

WHEREAS, the Board finds that the Sanitary District has no funds on hand available to apply on the costs of the Project, and that it is necessary to finance the entire costs thereof by the issuance of revenue bonds of the Sanitary District, in one or more series, in an aggregate principal amount not to exceed Four Million Five Hundred Thousand Dollars (\$4,500,000) and, if necessary, bond anticipation notes (the "BANs"); and

WHEREAS, the Board finds that there are outstanding bonds payable out of the Net Revenues of the sewage works designated as (i) the Sanitary District Bonds of 2005 (the "2005 Bonds"), dated December 30, 2005, now outstanding in the aggregate principal amount of \$13,237,000 and maturing semiannually on January 1 and July 1 over a period ending January 1, 2027, (ii) the Sanitary District Revenue Bonds of 2007 (the "2007 Bonds"), dated May 31, 2007, now outstanding in the aggregate principal amount of \$4,000,000 and maturing semiannually on January 1 and July 1 over a period ending January 1, 2027, and (iii) the Sanitary District Revenue and Refunding Revenue Bonds, Series 2013 (the "2013 Bonds"), dated May 15, 2013, now outstanding in the aggregate principal amount of \$36,300,000 and maturing semiannually on January 1 and July 1 over a period ending January 1, 2033, which 2005 Bonds, 2007 Bonds and 2013 Bonds (collectively, the "Outstanding Parity Bonds") constitute a first charge on the Net Revenues of the sewage works; and

WHEREAS, the resolutions authorizing the issuance of the Outstanding Parity Bonds permit the issuance of additional bonds ranking on a parity with the Outstanding Parity Bonds provided certain financial conditions can be met (collectively, the "Parity Tests"); and

WHEREAS, the Board finds, based upon the advice of its financial advisor, that the Parity Tests can be met with respect to the bonds to be issued pursuant to this resolution and, accordingly, the bonds to be issued pursuant to this resolution will constitute a first charge against the Net Revenues of the sewage works, on a parity with the Outstanding Parity Bonds, and are to be issued subject to the provisions of the laws of the Act, IC 36-1-12.5, as amended, and the terms and restrictions of this resolution; and

WHEREAS, the Board desires to authorize the issuance of BANs hereunder, if necessary, in one or more series, payable from the proceeds of the bonds issued hereunder and, if pledged, Net Revenues, and to authorize the refunding of the BANs, if issued; and

WHEREAS, the Board now finds that all conditions precedent to the adoption of a resolution authorizing the issuance of said bonds and BANs have been complied with in accordance with the provisions of the Act and IC 36-1-12.5, as amended;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SANITARY COMMISSIONERS OF THE MUNCIE SANITARY DISTRICT THAT:

Section 1. Authorization of Project.

(a) The Sanitary District will proceed with the acquisition, construction and installation of the Project as set out in Exhibit A hereto and in the Declaratory Resolution, to be confirmed by the Confirmatory Resolution, in accordance with the general plans, specifications, descriptions and estimates heretofore prepared and filed by consulting engineers employed by the Sanitary District, which general plans, specifications, descriptions and estimates are now on file or will be subsequently placed on file in the office of the Board of Sanitary Commissioners and be open for public inspection pursuant to IC 36-1-5-4, and are hereby adopted and approved, and by reference made a part of this resolution as fully as if the same were attached hereto and incorporated herein. The Project shall be undertaken by the Sanitary District pursuant to the Energy Savings Contract with Energy Systems Group, LLC, in accordance with IC 36-1-12.5, as amended, the form of which Energy Savings Contract is attached hereto as Exhibit B and is hereby approved by the Board. The President of the Board and any such other officers of the Board as he may designate are hereby authorized and directed to complete, execute and attest the Energy Savings Contract on behalf of the Sanitary District so long as its provisions are consistent with this resolution. The estimated cost of the acquisition, construction and installation of the Project is expected to not exceed Four Million Five Hundred Thousand Dollars (\$4,500,000), plus investment earnings on the BAN and bond proceeds. The Project shall be constructed in accordance with the plans and specifications heretofore mentioned, the Energy Savings Contract, the Act and IC 36-1-12.5, as amended, which Project is hereby approved.

(b) The terms "sewage works," "sewage works system," "works," "system," and words of like import where used in this resolution shall be construed to mean the Treatment Works, as defined in the Financial Assistance Agreement between the Sanitary District and the Indiana Finance Authority (the "Authority"), entered into in connection with the purchase by the Authority of the 2005 Bonds (the "Financial Assistance Agreement"), and includes the existing sewage works system and all real estate and equipment used in connection therewith and appurtenances thereto, and all extensions, additions and improvements thereto and replacements thereof now or at any time hereafter constructed or acquired. The bonds herein authorized shall be issued pursuant to and in accordance with the Act and IC 36-1-12.5, as amended.

Section 2. Issuance of BANs.

(a) The Sanitary District hereby authorizes the Controller of the City (the "Controller") to prepare and issue, if necessary, the BANs, in one or more series, for the purpose of procuring interim financing to apply on the cost of (i) the Project and (ii) costs incurred in the issuance of the BANs. The BANs may be issued in an aggregate principal amount not to exceed Four Million Five Hundred Thousand Dollars (\$4,500,000) to be designated "Sanitary District Bond Anticipation Notes, Series 201\_\_", to be completed with the year in which issued and appropriate series designation, if any. The BANs shall be sold at not less than 99% of their par value, shall be numbered consecutively from 1 upward, shall be in any multiple of Five Thousand Dollars (\$5,000) or One Dollar (\$1), as designated in the hereinafter defined BAN Purchase Agreement, shall be dated as of the date of delivery thereof, and shall bear interest at a rate not to exceed 5% per annum (the exact rate or rates to be determined through negotiations with the purchaser of the BANs) payable either upon redemption or maturity. Interest on the

BANs may, as determined by the Controller, with the advice of the Sanitary District's financial advisor, also be payable semiannually on January 1 and July 1 of each year, commencing on the first January 1 or July 1 following delivery of the BANs.

(b) Each series of BANs will mature no later than five (5) years after their date of delivery. The BANs are subject to renewal or extension at an interest rate or rates not to exceed 5% per annum (the exact rate or rates to be negotiated with the purchaser of the BANs). The term of the BANs and all renewal BANs may not exceed five years from the date of delivery of the initial BANs. The BANs shall be registered in the name of the purchasers thereof. Payment on the BANs may be made in installments.

(c) The BANs shall be issued pursuant to IC 5-1-14-5. The Sanitary District shall pledge to the payment of the principal of and interest on the BANs the proceeds from the issuance of the bonds pursuant to and in the manner prescribed by the Act. Interest on the BANs may also be payable from Net Revenues, junior and subordinate to the payment of the Outstanding Parity Bonds, any bonds issued under this resolution and any bonds issued subsequent to the date of delivery of the BANs, but while the BANs are outstanding. If any principal of or interest on the BANs to be paid from Net Revenues is to occur on a date other than January 1 or July 1, by reason of maturity or redemption, such payment may only occur if all of the principal and interest on all then outstanding bonds of the sewage works of the Sanitary District due on the next succeeding principal and interest payment date is fully accumulated in the Bond and Interest Account of the Sewage Works Sinking Fund as hereinafter described.

### Section 3. Issuance of Bonds.

(a) The Sanitary District shall issue its bonds, in one or more series, in the aggregate principal amount not to exceed Four Million Five Hundred Thousand Dollars (\$4,500,000), to be designated "Sanitary District Revenue Bonds, Series 201\_\_", to be completed with the year in which issued and appropriate series designation, if any (the "Bonds"), for the purpose of procuring funds to apply on the cost of (i) the Project, (ii) refunding the BANs, if issued, and (iii) issuance costs. The Bonds shall be issued and sold at a price not less than 99% of the par value thereof, in fully registered form, and in denominations of (i) Five Thousand Dollars (\$5,000) each or integral multiples thereof, (ii) \$100,000 and any \$1 integral multiple in excess thereof, as determined by the Controller, with the advice of the Sanitary District's financial advisor, or (iii) any such other amounts as determined by the Controller, with the advice of the District's financial advisor, as reasonably necessary to facilitate the sale of the Bonds. The Bonds shall be numbered consecutively from 1 up, originally dated as of the date of delivery, and shall bear interest at a rate or rates not exceeding 6.0% per annum (the exact rate or rates to be determined by bidding or negotiation). Interest is payable semiannually on January 1 and July 1 in each year, commencing on the first January 1 or the first July 1 after the date of issuance of the Bonds, as determined by the Controller with the advice of the Sanitary District's financial advisor. Principal shall be payable in lawful money of the United States of America, at the principal office of the Paying Agent (as hereinafter defined) and such Bonds shall mature semiannually on January 1 and July 1 or be subject to mandatory sinking fund redemption over a period ending no later than January 1, 2031. The Bonds shall mature in such amounts that produce (i) as level annual debt service as practicable taking into account the denominations of the Bonds, (ii) as

level annual debt service as practicable taking into account the denominations of the Bonds and the debt service on the Outstanding Parity Bonds and all other series of Bonds issued under this resolution or (iii) such other level of debt service as deemed most economically efficient to the Sanitary District, as determined by the Controller with the advice of the Sanitary District's financial advisor.

(b) All or a portion of each series of Bonds may be issued as one or more term bonds, upon election of the purchaser thereof. Such term bonds shall have a stated maturity or maturities consistent with the maturity schedule determined in accordance with the preceding paragraph, in the years as determined by the purchaser thereof, but in no event later than the last serial maturity date of the Bonds as determined in the preceding paragraph. The term bonds shall be subject to mandatory sinking fund redemption and final payment(s) at maturity at 100% of the principal amount thereof, plus accrued interest to the redemption date, on principal payment dates which are hereinafter determined in accordance with the preceding paragraph.

(c) The Bonds will be payable solely out of and constitute a first charge against the Net Revenues (herein defined as gross revenues after deduction only for the payment of the reasonable expenses of operation, repair and maintenance, excluding payments in lieu of property taxes ("PILOTs")) of the sewage works of the Sanitary District, on a parity with the payment of the Outstanding Parity Bonds.

(d) Each series of Bonds issued hereunder shall rank on a parity with any other Bonds issued hereunder for all purposes, including the pledge of Net Revenues under this resolution.

(e) Interest on the Bonds and BANs shall be calculated according to a 360-day calendar year containing twelve 30-day months.

#### Section 4. Registrar and Paying Agent.

(a) The Mayor and Controller are authorized, on behalf of the City, to select and appoint a qualified financial institution to serve as Registrar and Paying Agent for the Bonds, which Registrar is hereby charged with the responsibility of authenticating the Bonds (the "Registrar" or "Paying Agent"). The Controller is hereby authorized, on behalf of the Board, to enter into such agreements or understandings with such institution as will enable the institution to perform the services required of a Registrar and Paying Agent. The Controller is further authorized to pay such fees as the institution may charge for the services it provides as Registrar and Paying Agent, and such fees may be paid from the Sewage Works Sinking Fund established to pay the principal of and interest on the Bonds and fiscal agency charges.

(b) As to the BANs and as to the Bonds, if sold to any purchaser that does not object to such designation, the Controller may serve as Registrar and Paying Agent and, in that case, is hereby charged with the duties of a Registrar and Paying Agent.

(c) The principal of the Bonds and the principal and interest on the BANs shall be payable at the principal corporate trust office of the Paying Agent. All payments of interest on the Bonds shall be paid by check mailed one business day prior to the interest payment date to

the registered owners thereof, as of the fifteenth day of the month preceding each interest payment date ("Record Date"), at the addresses as they appear on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by such registered owner on or before such Record Date. If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall be instructed to wire transfer payments by 1:00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time).

(d) All payments on the BANs and Bonds shall be made in any coin or currency of the United States of America, which on the date of such payment, shall be legal tender for the payment of public and private debts.

(e) Each Bond shall be transferable or exchangeable only upon the books of the City kept for that purpose at the principal office of the Registrar, by the registered owner thereof in person, or by its attorney duly authorized in writing, upon surrender of such Bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner or its attorney duly authorized in writing, and thereupon a new fully registered Bond or Bonds in the same aggregate principal amount and of the same maturity shall be executed and delivered in the name of the transferee or transferees or the registered owner, as the case may be, in exchange therefor. The costs of such transfer or exchange shall be borne by the City. The City, the Board and the Registrar and Paying Agent for the Bonds may treat and consider the person in whose name such Bonds are registered as the absolute owner thereof for all purposes including for the purpose of receiving payment of, or on account of, the principal thereof and interest due thereon.

(f) The Registrar and Paying Agent may at any time resign as Registrar and Paying Agent upon giving 30 days' notice in writing to the City and by first class mail to each registered owner of the Bonds then outstanding, and such resignation will take effect at the end of such 30 day period or upon the earlier appointment of a successor registrar and paying agent by the City. Any such notice to the City may be served personally or sent by registered mail. The Registrar and Paying Agent may be removed at any time as Registrar and Paying Agent by the City, in which event the City may appoint a successor registrar and paying agent. The City shall notify each registered owner of the Bonds then outstanding by first class mail of the removal of the Registrar and Paying Agent. Notices to the registered owners of the Bonds shall be deemed to be given when mailed by first class mail to the addresses of such registered owners as they appear on the registration books kept by the Registrar.

(g) Upon the appointment of any successor registrar and paying agent by the City, the Controller is authorized and directed to enter into such agreements and understandings with such successor registrar and paying agent as will enable the institution to perform the services required of a registrar and paying agent for the Bonds. The Controller is further authorized to pay such fees as the successor registrar and paying agent may charge for the services it provides as registrar and paying agent and such fees may be paid from the Sewage Works Sinking Fund continued in Section 17 hereof. Any predecessor registrar and paying agent shall deliver all of

the Bonds and any cash or investments in its possession with respect thereto, together with the registration books, to the successor registrar and paying agent.

(h) Interest on Bonds which are authenticated on or before the Record Date which precedes the first interest payment date shall be paid from their original date. Interest on Bonds authenticated subsequent to the Record Date which precedes the first interest payment date thereon shall be paid from the interest payment date to which interest has been paid as of the date on which such Bonds are authenticated, unless a Bond is authenticated between the Record Date and the interest payment date in which case the interest shall be paid from such interest payment date.

Section 5. Book-Entry Provisions.

(a) The Board may, upon the advice of the Sanitary District's financial advisor, have the Bonds held by a central depository system pursuant to an agreement between the Sanitary District and The Depository Trust Company, New York, New York ("Depository Trust Company") and have transfers of the Bonds effected by book-entry on the books of the central depository system ("Book Entry System"). In such case, the Bonds may be initially issued in the form of a separate single authenticated fully registered bond for the aggregate principal amount of each separate maturity of the Bonds and the terms of this Section 5 shall apply to the Bonds. Upon initial issuance, the ownership of such Bonds shall be registered in the register kept by the Registrar in the name of Cede & Co., as nominee of the Depository Trust Company.

(b) With respect to the Bonds registered in the register kept by the Registrar in the name of Cede & Co., as nominee of the Depository Trust Company, the Board, the City and the Paying Agent shall have no responsibility or obligation to any other holders or owners (including any beneficial owner ("Beneficial Owner")) of the Bonds with respect to (i) the accuracy of the records of the Depository Trust Company, Cede & Co., or any Beneficial Owner with respect to ownership questions, (ii) the delivery to any bondholder (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any notice with respect to the Bonds including any notice of redemption, or (iii) the payment to any bondholder (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any amount with respect to the principal of, or premium, if any, or interest on the Bonds except as otherwise provided herein.

(c) No person other than the Depository Trust Company shall receive an authenticated Bond evidencing an obligation of the Board to make payments of the principal of and premium, if any, and interest on the Bonds pursuant to this resolution. The Board, the City and the Registrar and Paying Agent may treat as and deem the Depository Trust Company or Cede & Co. to be the absolute bondholder of each of the Bonds for the purpose of (i) payment of the principal of and premium, if any, and interest on such Bonds; (ii) giving notices of redemption and other notices permitted to be given to bondholders with respect to such Bonds; (iii) registering transfers with respect to such Bonds; (iv) obtaining any consent or other action required or permitted to be taken of or by bondholders; (v) voting; and (vi) for all other purposes whatsoever. The Paying Agent shall pay all principal of and premium, if any, and interest on the Bonds only to or upon the order of the Depository Trust Company, and all such payments shall

be valid and effective fully to satisfy and discharge the Board's, the City's and the Paying Agent's obligations with respect to principal of and premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. Upon delivery by the Depository Trust Company to the Board of written notice to the effect that the Depository Trust Company has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions herein with respect to consents, the words "Cede & Co." in this resolution shall refer to such new nominee of the Depository Trust Company. Notwithstanding any other provision hereof to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of the Depository Trust Company, all payments with respect to the principal of and premium, if any, and interest on such Bonds and all notices with respect to such Bonds shall be made and given, respectively, to the Depository Trust Company as provided in a representation letter from the City to the Depository Trust Company.

(d) Upon receipt by the Board of written notice from the Depository Trust Company to the effect that the Depository Trust Company is unable or unwilling to discharge its responsibilities and no substitute depository willing to undertake the functions of the Depository Trust Company hereunder can be found which is willing and able to undertake such functions upon reasonable and customary terms, then the Bonds shall no longer be restricted to being registered in the register of the Board kept by the Registrar in the name of Cede & Co., as nominee of the Depository Trust Company, but may be registered in whatever name or names the bondholders transferring or exchanging the Bonds shall designate, in accordance with the provisions of this resolution.

(e) If the Board determines that it is in the best interest of the bondholders that they be able to obtain certificates for the fully registered Bonds, the Board may notify the Depository Trust Company and the Registrar, whereupon the Depository Trust Company will notify the Beneficial Owners of the availability through the Depository Trust Company of certificates for the Bonds. In such event, the Registrar shall prepare, authenticate, transfer and exchange certificates for the bonds as requested by the Depository Trust Company and any Beneficial Owners in appropriate amounts, and whenever the Depository Trust Company requests the Board and the Registrar to do so, the Registrar and the Board will cooperate with the Depository Trust Company by taking appropriate action after reasonable notice (i) to make available one or more separate certificates evidencing the fully registered Bonds of any Beneficial Owner's Depository Trust Company account or (ii) to arrange for another securities depository to maintain custody of certificates for and evidencing the Bonds.

(f) If the Bonds shall no longer be restricted to being registered in the name of the Depository Trust Company, the Registrar shall cause said Bonds to be printed in blank in such number as the Registrar shall determine to be necessary or customary; provided, however, that the Registrar shall not be required to have such Bonds printed until it shall have received from the Board indemnification for all costs and expenses associated with such printing.

(g) In connection with any notice or other communication to be provided to bondholders by the Board or the Registrar with respect to any consent or other action to be taken by bondholders, the Board, the City or the Registrar, as the case may be, shall establish a record date for such consent or other action and give the Depository Trust Company notice of such



record date not less than fifteen (15) calendar days in advance of such record date to the extent possible.

(h) So long as the Bonds are registered in the name of the Depository Trust Company or Cede & Co. or any substitute nominee, the Board, the City and the Registrar and Paying Agent shall be entitled to request and to rely upon a certificate or other written representation from the Beneficial Owners of the Bonds or from the Depository Trust Company on behalf of such Beneficial Owners stating the amount of their respective beneficial ownership interests in the Bonds and setting forth the consent, advice, direction, demand or vote of the Beneficial Owners as of a record date selected by the Registrar and the Depository Trust Company, to the same extent as if such consent, advice, direction, demand or vote were made by the bondholders for purposes of this resolution and the Board, the City and the Registrar and Paying Agent shall for such purposes treat the Beneficial Owners as the bondholders. Along with any such certificate or representation, the Registrar may request the Depository Trust Company to deliver, or cause to be delivered, to the Registrar a list of all Beneficial Owners of the bonds, together with the dollar amount of each Beneficial Owner's interest in the Bonds and the current addresses of such Beneficial Owners.

(i) The Sanitary District may, upon the advice of its financial advisor, have the BANs held in the custody of the Depository Trust Company. In such case, the aforementioned terms and conditions of this Section 5 shall apply to the BANs.

Section 6. Redemption of BANs.

The BANs are prepayable by the Sanitary District, in whole or in part, on any date, upon 20 days' notice to the owner of the BANs, without any premium.

Section 7. Redemption of Bonds.

(a) The Bonds are redeemable at the option of the Sanitary District, but no sooner than six years after their date of delivery, or any date thereafter, on thirty (30) days' notice, in whole or in part, in the order of maturity as determined by the Sanitary District, and by lot within a maturity, at face value together with a premium no greater than 2%, plus accrued interest to the date fixed for redemption. The exact redemption dates and premiums shall be established by the Controller, with the advice of the Sanitary District's financial advisor, prior to the sale of the Bonds.

(b) If any Bond is issued as a term bond, the Paying Agent shall credit against the mandatory sinking fund requirement for the Bonds maturing as term bonds, and corresponding mandatory redemption obligation, in the order determined by the Sanitary District, any Bonds maturing as term bonds which have previously been redeemed (otherwise than as a result of a previous mandatory redemption requirement) or delivered to the Registrar for cancellation or purchased for cancellation by the Paying Agent and not theretofore applied as a credit against any redemption obligation. Each Bond maturing as a term bond so delivered or canceled shall be credited by the Paying Agent at 100% of the principal amount thereof against the mandatory sinking fund obligation on such mandatory sinking fund date, and any excess of such amount

shall be credited on future redemption obligations, and the principal amount of the Bonds to be redeemed by operation of the mandatory sinking fund requirement shall be accordingly reduced; provided, however, the Paying Agent shall credit only such Bonds maturing as term bonds to the extent received on or before forty-five (45) days preceding the applicable mandatory redemption date.

(c) Each \$5,000 principal amount of the Bonds shall be considered a separate bond for purposes of optional and mandatory redemption. If less than an entire maturity is called for redemption, the Bonds to be called for redemption shall be selected by lot by the Registrar. If some Bonds are to be redeemed by optional redemption and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the Bonds for optional redemption before selecting the Bonds by lot for the mandatory sinking fund redemption.

(d) Notice of redemption shall be given not less than (30) days prior to the date fixed for redemption unless such redemption notice is waived by the owner of the Bond or Bonds redeemed. Such notice shall be mailed to the address of the registered owner as shown on the registration record of the Sanitary District as of the date which is forty-five (45) days prior to such redemption date. The notice shall specify the date and place of redemption and sufficient identification of the Bonds called for redemption. The place of redemption may be determined by the Sanitary District. Interest on the Bonds so called for redemption shall cease on the redemption date fixed in such notice if sufficient funds are available at the place of redemption to pay the redemption price on the date so named.

#### Section 8. Execution of Bonds and BANs; Pledge of Net Revenues to Bonds.

(a) The BANs and Bonds shall be signed in the name of the City by the manual or facsimile signature of the Mayor of the City, countersigned by the manual or facsimile signature of the Controller, and attested by the manual or facsimile signature of the Clerk of the City, who shall affix the seal of the City to each of the BANs and Bonds manually or shall have the seal imprinted or impressed thereon by facsimile. These officials, by the signing of a Signature and No Litigation Certificate, shall adopt as and for their own proper signatures their facsimile signatures appearing on the Bonds. The Bonds must be authenticated by an authorized officer of the Registrar.

(b) The Bonds, and any bonds ranking on a parity therewith, as to both principal and interest, shall be payable from and secured by an irrevocable pledge of and shall constitute a first charge upon the Net Revenues of the sewage works of the Sanitary District, on a parity with the Outstanding Parity Bonds. The Sanitary District shall not be obligated to pay the Bonds or the interest thereon except from the Net Revenues of said works, and the Bonds shall not constitute an indebtedness or general obligation of the City within the meaning of the provisions and limitations of the constitution of the State of Indiana.

Section 9. Form of Bonds.

The form and tenor of the Bonds shall be substantially as follows, all blanks to be filled in properly and all necessary additions and deletions to be made prior to delivery thereof:

[Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation (“DTC”), to the City of Muncie, Indiana, or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.]

NO. \_\_\_

UNITED STATES OF AMERICA

STATE OF INDIANA

COUNTY OF DELAWARE

CITY OF MUNCIE

SANITARY DISTRICT REVENUE BOND, SERIES 201 \_\_\_

|             |             |             |                |              |
|-------------|-------------|-------------|----------------|--------------|
| Interest    | Maturity    | Original    | Authentication |              |
| <u>Rate</u> | <u>Date</u> | <u>Date</u> | <u>Date</u>    | <u>CUSIP</u> |

REGISTERED OWNER:

PRINCIPAL SUM:

The City of Muncie (the “City”), in Delaware County, State of Indiana, for and on behalf of the Sanitary District of the City (the “Sanitary District”), for value received, hereby promises to pay to the Registered Owner (named above) or registered assigns, from the source and in the manner herein provided, the Principal Sum set forth above, on the Maturity Date set forth above (unless this Bond be subject to and shall have been duly called for redemption and payment as provided for herein), and to pay interest hereon until the Principal Sum shall be fully paid at the rate per annum specified above from the interest payment date to which interest has been paid next preceding the Authentication Date of this Bond unless this Bond is authenticated after the fifteenth day of the month preceding an interest payment date and on or before such interest payment in which case it shall bear interest from such interest payment date, or unless this Bond is authenticated on or before \_\_\_\_\_ 15, 201\_, in which case it shall bear interest from the Original Date, which interest is payable semiannually on the first days of January and July of

each year, beginning on \_\_\_\_\_ 1, 201\_\_\_. Interest shall be calculated according to a 360-day calendar year containing twelve 30-day months.

The principal of this Bond is payable at the principal office of \_\_\_\_\_ (the "Registrar" or the "Paying Agent"), in the \_\_\_\_\_ of \_\_\_\_\_, Indiana. All payments of principal of and interest on this Bond shall be paid by check mailed one business day prior to the interest payment date to the registered owner hereof, as of the fifteenth day of the month preceding such payment, at the address as it appears on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by the registered owner. If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall wire transfer payments by 1:00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time). All payments on the Bond shall be made in any coin or currency of the United States of America, which on the dates of such payment, shall be legal tender for the payment of public and private debts.

This Bond shall not constitute an indebtedness or general obligation of the City within the meaning of the provisions and limitations of the constitution of the State of Indiana. The Sanitary District shall not be obligated to pay this Bond or the interest hereon except from the special fund provided from the hereinafter defined Net Revenues, on a parity with the Outstanding Parity Bonds (as defined in the hereinafter defined Bond Resolution).

This Bond is one of an authorized issue of Bonds of the Sanitary District, acting in the name of the City, [to be] [issued in series] of like date, tenor and effect, except as to numbering, interest rate, and dates of maturity, in the total amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Bonds") for this series, numbered from 1 up, issued for the purpose of providing funds to be applied on the cost of additions and improvements to the Sanitary District's sewage works, [to refund interim notes issued in anticipation of the Bonds,] and to pay incidental expenses, all as more particularly described in the Declaratory Resolution adopted on October 31, 2013, as confirmed by the Confirmatory Resolution adopted on November 14, 2013, which bonds are authorized by Resolution No. \_\_\_\_\_ adopted by the Board of Sanitary Commissioners of the Sanitary District on the 31<sup>st</sup> day of October, 2013 (the "Bond Resolution"), and in strict compliance with the provisions of Indiana Code 36-9-25 (the "Act") and Indiana Code 36-1-12.5, as amended, each as in effect on the issue date of the Bonds.

Pursuant to the provisions of the Act and the Bond Resolution, the principal and interest of this Bond and all other Bonds of said issue[, including the Sanitary District Revenue Bonds, Series 201\_\_ (the "Series 201\_\_ Bonds")] and any bonds hereafter issued on a parity therewith, are payable from the Sewage Works Sinking Fund (continued by the Bond Resolution) to be provided from the Net Revenues (defined as the gross revenues after the deduction only for the payment of the reasonable expenses of operation, repair and maintenance, excluding payments in lieu of property taxes) of the sewage works of the Sanitary District. The Bonds of the issue of which this Bond is a part ranks on a parity with the [Series 201\_\_ Bonds and] the Outstanding Parity Bonds (as defined and more particularly described in the Bond Resolution). The Sanitary

District reserves the right to issue additional bonds on a parity with the Bonds of this issue, as provided in the Bond Resolution.

The Sanitary District irrevocably pledges the entire Net Revenues of said sewage works to the prompt payment of the principal of and interest on the Bonds authorized by the Bond Resolution, of which this is one, and any bonds ranking on a parity therewith, including the [Series 201\_\_ Bonds and] Outstanding Parity Bonds, to the extent necessary for that purpose, and covenants that it will cause to be fixed, maintained and collected such rates and charges for service rendered by said works as are sufficient in each year for the payment of the proper and reasonable expenses of Operation and Maintenance, as defined in the Financial Assistance Agreement (as defined in the Bond Resolution), of the sewage works and for the payment of the sums required to be paid into the Sinking Fund under the provisions of the Act and the Bond Resolution. If the Sanitary District or the proper officers of the Sanitary District shall fail or refuse to so fix, maintain and collect such rates or charges, or if there be a default in the payment of the interest on or principal of this Bond, the owner of this Bond shall have all of the rights and remedies provided for in the Act, including the right to have a receiver appointed to administer the works and to charge and collect rates sufficient to provide for the payment of this Bond and the interest hereon.

The Sanitary District further covenants that it will set aside and pay into its Sewage Works Sinking Fund a sufficient amount of the Net Revenues of said works to meet (a) the interest on all bonds which by their terms are payable from the revenues of the sewage works, as such interest shall fall due, (b) the necessary fiscal agency charges for paying the bonds and interest, (c) the principal of all bonds which by their terms are payable from the revenues of the sewage works, as such principal shall fall due, and (d) an additional amount to [create and] maintain the reserve required by the Bond Resolution. Such required payments shall constitute a first charge upon all the Net Revenues of said works, on a parity with the [Series \_\_\_ Bonds and] Outstanding Parity Bonds.

The Bonds of this issue maturing on \_\_\_\_\_ 1, 20\_\_, and thereafter, are redeemable at the option of the Sanitary District on \_\_\_\_\_ 1, 20\_\_, or any date thereafter, on thirty (30) days' notice, in whole or in part, in the order of maturity as determined by the Sanitary District and by lot within a maturity, at face value together with the following premiums:

\_\_\_% if redeemed on \_\_\_\_\_ 1, 20\_\_ or thereafter  
on or before \_\_\_\_\_, 20\_\_;  
\_\_\_% if redeemed on \_\_\_\_\_ 1, 20\_\_ or thereafter  
on or before \_\_\_\_\_, 20\_\_;  
0% if redeemed on \_\_\_\_\_ 1, 20\_\_, or thereafter  
prior to maturity;

plus in each case accrued interest to the date fixed for redemption.

[The Bonds maturing on \_\_\_\_\_ 1, \_\_ are subject to mandatory sinking fund redemption prior to maturity, at a redemption price equal to the principal amount thereof plus accrued interest, on the dates and in the amounts set forth below:

|             |                  |             |                  |
|-------------|------------------|-------------|------------------|
|             | <u>Term Bond</u> |             | <u>Term Bond</u> |
| <u>Date</u> | <u>Amount</u>    | <u>Date</u> | <u>Amount</u>    |
|             | *                |             | *                |

\*Final Maturity]

Each Five Thousand Dollars (\$5,000) principal amount shall be considered a separate bond for purposes of optional [and mandatory] redemption. If less than an entire maturity is called for redemption, the Bonds to be called shall be selected by lot by the Registrar. [If some Bonds are to be redeemed by optional redemption and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the Bonds for optional redemption before selecting the Bonds by lot for the mandatory sinking fund redemption.]

Notice of redemption shall be mailed to the address of the registered owner as shown on the registration record of the Sanitary District, as of the date which is forty-five (45) days prior to such redemption date, not less than thirty (30) days prior to the date fixed for redemption. The notice shall specify the date and place of redemption and sufficient identification of the Bonds called for redemption. The place of redemption may be determined by the Sanitary District. Interest on the Bonds so called for redemption shall cease on the redemption date fixed in such notice, if sufficient funds are available at the place of redemption to pay the redemption price on the date so named.

If this Bond shall not be presented for payment or redemption on the date fixed therefor, the Sanitary District may deposit in trust with its depository bank, an amount sufficient to pay such Bond or the redemption price, as the case may be, and thereafter the registered owner shall look only to the funds so deposited in trust with said bank for payment and the Sanitary District shall have no further obligation or liability in respect thereto.

This Bond is transferable or exchangeable only upon the books of the Sanitary District kept for that purpose at the [principal corporate trust] office of the Registrar, by the registered owner hereof in person, or by its attorney duly authorized in writing, upon surrender of this Bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner or its attorney duly authorized in writing, and thereupon a new fully registered Bond or Bonds in the same aggregate principal amount and of the same maturity, shall be executed and delivered in the name of the transferee or transferees or to the registered owner, as the case may be, in exchange therefor. The Sanitary District, the Registrar and any paying agent for this Bond may treat and consider the person in whose name this Bond is registered as the absolute owner hereof for all purposes including for the purpose of receiving payment of, or on account of, the principal hereof and interest due hereon.

[The Bonds shall be initially issued in a Book Entry System (as defined in the Resolution). The provisions of this Bond and of the Resolution are subject in all respects to the provisions of the Letter of Representations between the Sanitary District and The Depository Trust Company, or any substitute agreement, effecting such Book Entry System.]

This Bond is subject to defeasance prior to redemption or payment as provided in the Resolution referred to herein. THE OWNER OF THIS BOND, BY THE ACCEPTANCE HEREOF, HEREBY AGREES TO ALL THE TERMS AND PROVISIONS CONTAINED IN THE BOND RESOLUTION. The Bond Resolution may be amended without the consent of the owners of the Bonds as provided in the Bond Resolution.

The Bonds maturing in any one year are issuable only in fully registered form in the denomination of \$\_\_\_\_\_ or any integral multiple thereof not exceeding the aggregate principal amount of the Bonds maturing in such year.

It is hereby certified and recited that all acts, conditions and things required to be done precedent to and in the preparation and complete execution, issuance and delivery of this Bond have been done and performed in regular and due form as provided by law.

This Bond shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been executed by an authorized representative of the Registrar.

IN WITNESS WHEREOF, the Board of Sanitary Commissioners of the City of Muncie, in Delaware County, Indiana, has caused this Bond to be executed in the name of the City for and on behalf of the Muncie Sanitary District of such City, by the manual or facsimile signature of its Mayor, countersigned by the manual or facsimile signature of its Controller, its corporate seal to be hereunto affixed, imprinted or impressed by any means and attested manually or by facsimile by its Clerk.

CITY OF MUNCIE, INDIANA

[SEAL]

By: \_\_\_\_\_  
Mayor

Countersigned:

\_\_\_\_\_  
Controller

Attest:

\_\_\_\_\_  
Clerk

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

It is hereby certified that this Bond is one of the Bonds described in the Bond Resolution.

\_\_\_\_\_  
As Registrar

By: \_\_\_\_\_  
Authorized Representative

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_, the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_, attorney, to transfer the within Bond in the books kept for the registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in a Securities Transfer Association recognized signature guarantee program.

\_\_\_\_\_  
NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

*End of Bond Form*

Section 10. Preparation and Sale of BANs and Bonds; Official Statement; Investment Letter.

(a) The Controller is hereby authorized and directed to have the BANs and Bonds prepared, and the Mayor, the Controller and the Clerk are hereby authorized and directed to execute the BANs and Bonds in the form and manner herein provided. The Controller is hereby authorized and directed to deliver the BANs and Bonds to the respective purchasers thereof after sale made in accordance with the provisions of this resolution, provided that at the time of said delivery the Controller shall collect the full amount which the respective purchasers have agreed to pay therefor, which amount shall not be less than 99% of the par value of the BANs and not less than 99% of the par value of the Bonds. The Sanitary District may receive payment for the Bonds and BANs in installments. Each series of Bonds herein authorized, as and to the extent paid for and delivered to the purchaser, shall be the binding special obligations of the Sanitary District payable solely out of the Net Revenues of the sewage works. The proceeds derived from the sale of the Bonds shall be and are hereby set aside for application on the cost of (i) the



Project hereinbefore referred to, (ii) the refunding of the BANs, if issued, and (iii) the expenses necessarily incurred in connection with the BANs and Bonds. The proper officers of the Sanitary District are hereby directed to draw all proper and necessary warrants, and to do whatever acts and things which may be necessary to carry out the provisions of this resolution.

(b) Distribution of an official statement or private placement memorandum (preliminary and final) for the Bonds, prepared on behalf of the Sanitary District, is hereby authorized and approved and the President of the Board (the "President"), the Mayor or the Controller is authorized and directed to execute the official statement or private placement memorandum on behalf of the Sanitary District in a form consistent with this resolution. The President, the Mayor or the Controller is hereby authorized to designate the preliminary official statement or preliminary private placement memorandum as "nearly final" for purposes of Rule 15c2-12 (the "Rule") as promulgated by the Securities and Exchange Commission.

(c) As an alternative to the preparation and distribution of an official statement or private placement memorandum for the Bonds, the Sanitary District may receive from the purchaser of the Bonds a sophisticated investment letter which satisfies applicable state and federal securities laws

(d) The Controller, with the advice of the Sanitary District's financial advisor, is hereby authorized to obtain one or more ratings for the Bonds if such rating or ratings will facilitate the sale of the Bonds.

#### Section 11. Sale of Bonds.

(a) The Sanitary District may negotiate the sale of the Bonds to Bank of America Public Capital Corp, any of its affiliates, or any such other third party financial institution or company capable of financing the Project (such capability to be determined by the Controller with the advice of the Sanitary District's financial advisor) under the terms of the Energy Savings Contract and this resolution. In such case, the Controller is hereby authorized and directed to deliver said Bonds to the purchaser in accordance with an agreement for the purchase of the Bonds between the City and the purchaser (the "Bond Purchase Agreement"). The substantially final form of Bond Purchase Agreement between the City and the purchaser is attached hereto as Exhibit C and is hereby approved by the Sanitary District. The Mayor and Controller are hereby authorized to execute the Bond Purchase Agreement and deliver the Bonds to the purchaser so long as their terms are consistent with this resolution. The Bond Purchase Agreement shall establish a final principal amount, purchase price, interest rates, maturity schedule, denominations and redemption features. The Bond Purchase Agreement may provide that if the interest on the Bonds becomes taxable to the holders thereof for any reason, the Sanitary District will pay to such holders a taxable rate sufficient to maintain the tax-exempt yield on the Bonds.

(b) As an alternative to a negotiated sale of the Bonds as provided in (a) above, the Bonds may be sold at a competitive bond sale. In such case, the Controller shall cause to be published either (i) a notice of bond sale in the *The Star Press*, the only newspaper published in the City, two times, at least one week apart, the first publication made at least fifteen (15) days

before the date of the sale and the second publication being made at least three (3) days before the date of the sale, or (ii) a notice of intent to sell in in the *The Star Press* and the *Court & Commercial Record*, all in accordance with IC 5-1-11 and IC 5-3-1. A notice or summary notice of sale may also be published in the *Court & Commercial Record* or in *The Bond Buyer* in New York, New York. The notice shall state the character and amount of the Bonds, the maximum rates of interest thereon, the terms and conditions upon which bids will be received and the sale made, and such other information as the Controller, the Board and the attorneys employed by the Sanitary District shall deem advisable, and any summary notice may contain any information deemed so advisable. Said notice may provide, among other things, that electronic bidding will be permitted and that the successful bidder shall be required to submit a certified or cashier's check or a wire transfer to guarantee performance on the part of the bidder no later than 3:30 p.m. (Muncie time) on the next business day following the award. In the event the successful bidder shall fail or refuse to accept delivery of the Bonds and pay for the same as soon as the Bonds are ready for delivery, or at the time fixed in the notice of sale, then the proceeds of such deposit shall become the property of the Sanitary District and shall be considered as its liquidated damages on account of such default. All bids for the Bonds shall be sealed and shall be presented either to the Controller, or at the office of the Sanitary District's financial advisor on behalf of the Controller. The Controller, or the Sanitary District's financial advisor on behalf of the Controller, shall continue to receive all bids offered until the hour on the day fixed in the notice, at which time and place the Controller, or the Sanitary District's financial advisor on behalf of the Controller, shall open and consider the bids. Bidders for the Bonds will be required to name the rate or rates of interest which the Bonds are to bear, not exceeding six percent (6.0%) or such lower maximum rate set forth in the notice, and such interest rate or rates shall be in multiples of one-eighth (1/8) or one-twentieth (1/20) of one percent (1%). The rate bid on a maturity shall be equal to or greater than the rate bid on the immediately preceding maturity. No conditional bid or bid for less than 99% of the face amount of the Bonds will be considered. The opinion of Bose McKinney & Evans LLP, bond counsel of Indianapolis, Indiana, approving the legality of the Bonds, will be furnished to the purchaser at the expense of the Sanitary District. The Bonds shall be awarded by the Controller to the best bidder who has submitted its bid in accordance with the terms of this resolution and the notice. The best bidder will be the one who offers the lowest net interest cost to the Sanitary District to be determined by computing the total interest on all of the Bonds to their maturities, adding thereto the discount bid, if any, and deducting therefrom the premium bid, if any. The right to reject any and all bids is hereby reserved. If an acceptable bid is not received on the date of sale, the sale may be continued from day to day thereafter without further advertisement for a period of thirty (30) days, during which time no bid which provides a higher net interest cost to the Sanitary District than the best bid received at the time of the advertised sale will be considered.

Section 12. Financial Records and Accounts; Continuing Disclosure.

(a) The Sanitary District shall keep proper records and books of account, separate from all of its other records and accounts, in which complete and correct entries shall be made showing all revenues received on account of the operation of said sewage works and all disbursements made therefrom and all transactions relating to said sewage works. Copies of all such statements and reports shall be kept on file in the office of the Sanitary District.

(b) If the Bonds are subject to the Rule, a Continuing Disclosure Undertaking Agreement (“Undertaking”) for the Bonds is hereby authorized and approved by the Board, and the Mayor and Controller are hereby authorized and directed to complete, execute and attest the same on behalf of the Sanitary District. Notwithstanding any other provisions of this resolution, failure of the Sanitary District to comply with the Undertaking shall not be considered an event of default under the Bonds or this resolution.

Section 13. Pledge of Net Revenues.

The interest on and the principal of the Bonds issued pursuant to the provisions of this resolution, and any bonds hereafter issued on a parity therewith, shall constitute a first charge on all the Net Revenues, on a parity with the Outstanding Parity Bonds, and such Net Revenues are hereby irrevocably pledged to the payment of the interest on and principal of such Bonds, to the extent necessary for that purpose.

Section 14. Use of Proceeds.

Proceeds of the Bonds shall be applied as follows and in the following order:

(a) *First*, the accrued interest received at the time of the delivery of the Bonds and premium, if any, shall be deposited in the Sinking Fund (as hereinafter defined).

(b) *Second*, the remaining proceeds from the sale of the Bonds, to the extent not used to refund the BANs, if issued, and BAN proceeds shall be deposited in a bank or banks which are legally designated depositories for the funds of the Sanitary District, in a special account or accounts to be designated as “Muncie Sanitary District, Sewage Works Construction Account” (the “Construction Account”). The funds in the Construction Account shall be expended only for the purpose of paying the cost of the Project, refunding the BANs, if issued, or as otherwise required by the Act, or for the expenses of issuance of the Bonds or BANs. Any balance or balances remaining unexpended in such special account or accounts after completion of the Project, which are not required to meet unpaid obligations incurred in connection with such Project, shall either (1) be paid into the Sinking Fund and used solely for the purposes of said Sinking Fund or (2) be used for the same purpose or type of project for which the Bonds were originally issued, all in accordance with IC 5-1-13, as amended and supplemented.

(c) All funds deposited to the credit of the Sinking Fund or the Construction Account shall be deposited, held, secured or invested in accordance with the laws of the State of Indiana relating to the depositing, holding, securing or investing of public funds, including particularly IC 5-13, and the acts amendatory thereof and supplemental thereto.

(d) Prior to the delivery of the Bonds or BANs, the Controller shall obtain the legal opinion of Bose McKinney & Evans LLP, bond counsel, of Indianapolis, Indiana, and shall furnish such opinion to the purchaser of the Bonds or BANs. The cost of the opinion shall be considered as part of the costs incidental to the issuance of the Bonds or BANs and shall be paid out of the proceeds thereof.

Section 15. Revenue Fund.

There is hereby continued a fund known as the Sewage Works Revenue Fund (the "Revenue Fund") into which there shall be deposited upon receipt, all income and revenues of the sewage works. This fund shall be maintained separate and apart from all other accounts of the City. All moneys deposited in the Revenue Fund may be invested in accordance with IC 5-13, as amended and supplemented.

Section 16. Operation and Maintenance Fund.

There is hereby continued the Operation and Maintenance Fund (the "O&M Fund"). On the last day of each calendar month, a sufficient amount of moneys shall be transferred from the Revenue Fund to the O&M Fund so that the balance maintained in the O&M Fund shall be sufficient to pay the expenses of operation, repair and maintenance for the then next succeeding two calendar months. The moneys credited to the O&M Fund shall be used for the payment of the reasonable and proper operation, repair and maintenance expenses of the sewage works on a day-to-day basis, but none of the moneys in the O&M Fund shall be used for PILOTs. Any monies in the O&M Fund may be transferred to the Sinking Fund if necessary to prevent a default in the payment of principal of or interest on the outstanding bonds of the Sanitary District which are payable from the Net Revenues of the sewage works.

Section 17. Sewage Works Sinking Fund.

There is hereby continued the Sewage Works Sinking Fund (the "Sinking Fund") for the payment of the principal of and interest on revenue bonds which by their terms are payable from the Net Revenues of the sewage works, and the payment of any fiscal agency charges in connection with the payment of bonds and interest. There shall be set aside and deposited in the Sinking Fund, as available, and as provided below, a sufficient amount of the Net Revenues of the sewage works to meet the requirements of the Bond and Interest Account and of the Debt Service Reserve Account hereby continued in the Sinking Fund. Such payments shall continue until the balances in the Bond and Interest Account and the Debt Service Reserve Account equal the principal of and interest on all of the then outstanding bonds of the Sanitary District which are payable from the Net Revenues of the sewage works to their final maturity.

(a) Bond and Interest Account. There is hereby continued within the Sinking Fund the Bond and Interest Account. Any moneys heretofore accumulated to pay principal of and interest on the Refunded Bonds shall be credited to and become a part of the Trust Account under the Escrow Agreement and shall be applied on the first payments made from the Trust Account. There shall be transferred, on the last day of each month, from the Revenue Fund and credited to the Bond and Interest Account an amount of the Net Revenues of said sewage works equal to at least one-sixth (1/6) of the interest on all then outstanding bonds payable from the Net Revenues on the then next succeeding interest payment date and at least one-sixth (1/6) of the principal of all then outstanding bonds payable from the Net Revenues on the then next succeeding principal payment date, until the amount of interest and principal payable on the then next succeeding interest and principal payment date shall have been so credited. There shall similarly be credited to the account any amount necessary to pay the bank fiscal agency charges

for paying interest on outstanding bonds as the same become payable. The Sanitary District shall, from the sums deposited in the Sinking Fund and credited to the Bond and Interest Account, remit promptly to the registered owner or to the bank fiscal agency sufficient moneys to pay the interest and principal on the due dates thereof together with the amount of bank fiscal agency charges.

(b) Debt Service Reserve Account. There is hereby continued, within the Sinking Fund, the Debt Service Reserve Account (the "Reserve Account"). On the date of delivery of the Bonds, funds on hand of the Sanitary District, Bond proceeds, or a combination thereof may be deposited into the Reserve Account. The balance to be maintained in the Reserve Account shall equal but not exceed the least of (i) the maximum annual debt service on the Bonds, the Outstanding Parity Bonds and any bonds issued in the future by the Sanitary District which are payable from the Net Revenues of the sewage works and which rank on a parity with the Bonds (the "Parity Bonds"), (ii) 125% of average annual debt service on the Bonds, the Outstanding Parity Bonds and any Parity Bonds, or (iii) 10% of the proceeds of the Bonds, the Outstanding Parity Bonds and any Parity Bonds (the "Reserve Requirement"); provided, however, that so long as the Authority shall hold any of the Outstanding Parity Bonds, the Reserve Requirement shall mean the maximum annual debt service on the Bonds, the Outstanding Parity Bonds and any Parity Bonds. If on the date of delivery of the Bonds no deposit is made to the Reserve Account, or the initial deposit into the Reserve Account does not cause the balance therein to equal the Reserve Requirement, beginning with the first month after the Bonds are delivered an amount of Net Revenues shall be credited to the Reserve Account on the last day of each calendar month until the balance therein equals the Reserve Requirement. The monthly deposits shall be equal in amount and sufficient to accumulate the Reserve Requirement within five (5) years of the date of delivery of the Bonds.

The Reserve Requirement may be satisfied with cash, Net Revenues, a debt service reserve surety, or a combination thereof. The surety must be issued by an insurance company rated in the highest category by Standard & Poor's Corporation and Moody's Investors Service. In addition, so long as the 2005 Bonds are held by the Authority, the prior written consent of the Authority shall be required for the purchase of any surety.

The Reserve Account shall constitute the margin for safety and as protection against default in the payment of principal of and interest on the Bonds, the Outstanding Parity Bonds and any Parity Bonds, and the moneys in the Reserve Account shall be used to pay current principal and interest on the Bonds, the Outstanding Parity Bonds and any Parity Bonds to the extent that moneys in the Bond and Interest Account are insufficient for that purpose. Any deficiency in the balance maintained in the Reserve Account shall be promptly made up from the next available Net Revenues remaining after credits into the Bond and Interest Account. Any moneys in the Reserve Account in excess of the Reserve Requirement shall either be transferred to the Sewage Works Improvement Fund or be used for the purchase of outstanding bonds or installments of principal of fully registered bonds.

Section 18. Sewage Works Improvement Fund.

There is hereby continued a special fund designated the "Sewage Works Improvement Fund" (the "Improvement Fund"). In the event all required payments into the O&M Fund and the Sinking Fund have been met to date, any excess Net Revenues may be transferred to the Improvement Fund for extensions, replacements, improvements and additions to the works. No such transfer to the Improvement Fund shall be made, however, which will interfere with the requirements of the Sinking Fund or the accumulation of the required reserve therein. All or any portion of the funds accumulated and reserved in the Improvement Fund shall be transferred to the Sinking Fund, if necessary, to prevent a default in the payment of principal of or interest on the bonds payable from the Sinking Fund or to eliminate any deficiencies in credits to or minimum balance in the Reserve Account. Moneys in the Improvement Fund also may be transferred to the O&M Fund to meet unforeseen contingencies in the operation, repair and maintenance of the sewage works. The Sanitary District reserves the right to transfer PILOTs from the Improvement Fund, no more frequently than semiannually, in accordance with the Act, and only if all required transfers have been made to the Sinking Fund and the accounts of the Sinking Fund contain the required balances as of the date the PILOTs are paid.

Section 19. Investment of Funds.

The Board is hereby authorized to invest moneys pursuant to IC 5-1-14-3 and the provisions of this resolution (subject to applicable requirements of federal law to insure such yield is the then current market rate) to the extent necessary or advisable to preserve the exclusion from gross income of interest on the Bonds and BANs under federal law. The Board shall keep full and accurate records of investment earnings and income from moneys held in the funds and accounts referenced herein. In order to comply with the provisions of the resolution, the Board is hereby authorized and directed to employ consultants or attorneys from time to time to advise the Sanitary District as to requirements of federal law to preserve the tax exclusion. The Board may pay any fees as operation expenses of the sewage works.

Section 20. Maintenance of Accounts.

The Sinking Fund shall be deposited in and maintained as a separate account or accounts from all other accounts of the Sanitary District. The O&M Fund and the Improvement Fund may be maintained in a single account, or accounts, but such account, or accounts, shall likewise be maintained separate and apart from all other accounts of the Sanitary District and apart from the Sinking Fund account or accounts. All moneys deposited in the accounts shall be deposited, held and secured as public funds in accordance with the public depository laws of the State of Indiana; provided that moneys therein may be invested in obligations in accordance with the applicable laws, including particularly IC 5-13, as amended or supplemented, and in the event of such investment the income therefrom shall become a part of the funds invested and shall be used only as provided in this resolution. Nothing in this section or elsewhere in this resolution shall be construed to require that separate bank accounts be established and maintained for the funds and accounts continued by this resolution.

Section 21. Maintenance of Books and Records.

The Sanitary District shall establish and maintain the books and other financial records of the Projects (including the establishment of a separate account or subaccount for the Projects) and the sewage works in accordance with (i) generally accepted governmental accounting standards for utilities, on an accrual basis, as promulgated by the Government Accounting Standards Board and (ii) the rules, regulations and guidance of the State Board of Accounts.

Section 22. Rate Covenant.

The Sanitary District covenants and agrees that it will establish and maintain just and equitable rates and charges for the use of and the service rendered by the sewage works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses the sewage works, or that in any way uses or is served by the sewage works, at a level adequate to produce and maintain sufficient revenue (including user and other charges, fees, income or revenues available to the Sanitary District) to provide for the proper and reasonable expenses of Operation and Maintenance (as defined in the Financial Assistance Agreement) of the sewage works, to comply with and satisfy all covenants contained in this resolution and the Financial Assistance Agreement and to pay all obligations of the sewage works and of the Sanitary District with respect to the sewage works, including the sums required to be paid into the Sinking Fund by the Act and this resolution. Such rates and charges shall, if necessary, be changed and readjusted from time to time so that the revenues therefrom shall always be sufficient to meet the expenses of Operation and Maintenance of the sewage works and the requirements of the Sinking Fund. The rates and charges so established shall apply to any and all use of such works by and service rendered to the Sanitary District and the City, and shall be paid by the Sanitary District and the City, as the charges accrue.

Section 23. Defeasance of Bonds.

If, when any of the Bonds issued hereunder shall have become due and payable in accordance with their terms or shall have been duly called for redemption or irrevocable instructions to call the Bonds or any portion thereof for redemption shall have been given, and the whole amount of the principal and the interest and the premium, if any, so due and payable upon all of the Bonds or any portion thereof and coupons then outstanding shall be paid; or (i) sufficient moneys, or (ii) direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America, the principal of and the interest on which when due will provide sufficient moneys, shall be held in trust for such purpose, and provision shall also be made for paying all fees and expenses for the redemption, then and in that case the Bonds issued hereunder or any designated portion thereof shall no longer be deemed outstanding or entitled to the pledge of the Net Revenues of the Sanitary District's sewage works.

Section 24. Additional Bond Provisions.

The Sanitary District reserves the right to authorize and issue additional BANs at any time ranking on a parity with the BANs. The Sanitary District reserves the right to authorize and issue additional Parity Bonds, payable out of the Net Revenues of its sewage works, ranking on a parity with the Bonds, for the purpose of financing the cost of future additions, extensions, replacements and improvements to the sewage works, or to refund obligations, subject to the following conditions:

(a) All required payments into the Sinking Fund shall have been made in accordance with the provisions of this resolution, and the interest on and principal of all bonds payable from the Net Revenues of the sewage works shall have been paid in accordance with their terms. The Reserve Requirement shall be satisfied for the additional Parity Bonds either at the time of delivery of the additional Parity Bonds or over a five year or shorter period, in a manner which is commensurate with the requirements established in Section 17(b) of this resolution.

(b) The Net Revenues of the sewage works in the fiscal year immediately preceding the issuance of any such Parity Bonds shall be not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of the then outstanding bonds and the additional Parity Bonds proposed to be issued; or, prior to the issuance of said Parity Bonds, the sewage rates and charges shall be increased sufficiently so that said increased rates and charges applied to the reporting period would have produced Net Revenues for said period equal to not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of the then outstanding bonds and the additional Parity Bonds proposed to be issued.

For purposes of this subsection all showings shall be prepared by a certified public accountant employed by the Sanitary District for that purpose.

(c) The interest on the additional Parity Bonds shall be payable semiannually on the first days of January and July and the principal on, or mandatory sinking fund redemption dates for, the additional Parity Bonds shall be payable semiannually on January 1 and July 1.

(d) So long as the 2005 Bonds are held by the Authority, (i) the Sanitary District obtains the consent of the Authority, (ii) the Sanitary District has faithfully performed and is in compliance with each of its obligations, agreements and covenants contained in the Financial Assistance Agreement and this resolution, and (iii) the Sanitary District is in compliance with its National Pollutant Discharge Elimination System permits, except for non-compliance for which purpose the Parity Bonds are issued, including refunding bonds issued prior to, but part of the overall plan to eliminate such non-compliance.

Section 25. Further Covenants of the Sanitary District; Maintenance, Insurance, Pledge Not to Encumber, Subordinate Indebtedness, and Contract with Bondholders. For the purpose of further safeguarding the interests of the holders of the BANs and Bonds, it is specifically provided as follows:



(a) The Project shall be acquired, constructed and installed in accordance with and pursuant to the terms of the Energy Savings Contract.

(b) The Project shall be constructed under the supervision and subject to the approval of such competent engineer as shall be designated by the Sanitary District. All estimates for work done or material furnished shall first be checked by the engineer and approved by the Sanitary District.

(c) So long as any of the BANs or Bonds herein authorized are outstanding, the Sanitary District shall at all times maintain its sewage works in good condition and operate the same in an efficient manner and at a reasonable cost.

(d) So long as any of the Bonds and BANs are outstanding, the Sanitary District shall maintain insurance on the insurable parts of the system, of a kind and in an amount such as is usually carried by private corporations engaged in a similar type of business. All insurance shall be placed with responsible insurance companies qualified to do business under the laws of the State of Indiana. So long as the 2005 Bonds are held by the Authority, such insurance shall be acceptable to the Authority. As an alternative to maintaining such insurance, the Sanitary District may maintain a self-insurance program with catastrophic or similar coverage so long as such program meets the requirements of any applicable laws or regulations and is maintained in a manner consistent with programs maintained by similarly situated municipalities. All insurance proceeds and condemnation awards shall be used to replace or repair the sewage works.

(e) So long as any of the BANs or Bonds are outstanding, the Sanitary District shall not mortgage, pledge or otherwise encumber such works, or any part thereof, and shall not sell, lease or otherwise dispose of any part of the same, excepting only such machinery, equipment or other property as may become worn out or obsolete, or shall no longer be necessary for use in connection with said utility.

(f) Except as hereinbefore provided in Section 24 hereof, so long as any of the Bonds herein authorized are outstanding, no additional Bonds or other obligations pledging any portion of the revenues of said sewage works shall be authorized, executed, or issued by the Sanitary District except such as shall be made subordinate and junior in all respects to the Bonds herein authorized, unless all of the Bonds herein authorized are redeemed, retired or defeased pursuant to Section 23 hereof coincidentally with the delivery of such additional bonds or other obligations.

(g) The Sanitary District shall take all action or proceedings necessary and proper, to the extent permitted by law, to require connection of all property where liquid, solid waste and sewage is produced with available sanitary sewers. The Sanitary District shall, insofar as possible, and to the extent permitted by law, cause all such sanitary sewers to be connected with said sewage works.

(h) The provisions of this resolution shall constitute a contract by and between the Sanitary District and the owners of the Bonds and BANs herein authorized, and after the issuance of said Bonds or BANs, this resolution shall not be repealed or amended in any respect which will adversely affect the rights of the owners of the Bonds or BANs nor shall the Board adopt any law, ordinance or resolution which in any way adversely affects the rights of such owners so long as any of the Bonds, BANs or the interest thereon remain unpaid. Except for the changes set forth in Section 27(a)-(g), this resolution may be amended, however, without the consent of BAN or Bond owners, if the Board determines, in its sole discretion, that such amendment would not adversely affect the owners of the BANs or Bonds.

(i) The provisions of this resolution shall be construed to create a trust in the proceeds of the sale of the Bonds and BANs herein authorized for the uses and purposes herein set forth, and the owners of the Bonds and BANs shall retain a lien on such proceeds until the same are applied in accordance with the provisions of this resolution and of said governing Act. The provisions of this resolution shall also be construed to create a trust in the portion of the Net Revenues herein directed to be set apart and paid into the Sinking Fund for the uses and purposes of said fund as in this resolution set forth. The owners of the Bonds shall have all the rights, remedies and privileges set forth in the provisions of the governing Act hereinbefore referred to, including the right to have a receiver appointed to administer the sewage works, in the event the Sanitary District shall fail or refuse to fix and collect sufficient rates and charges for those purposes, or shall fail or refuse to operate and maintain said system and to apply properly the revenues derived from the operation thereof, or in the event of default in the payment of the principal of or interest on any of the Bonds herein authorized or in the event of default in respect to any of the provisions of this resolution or the governing Act.

Section 26. Tax Covenants. In order to preserve the exclusion of interest on the Bonds and BANs from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as existing on the date of issuance of the Bonds or BANs, as the case may be ("Code") and as an inducement to purchasers of the Bonds and BANs, the Sanitary District represents, covenants and agrees that:

(a) The sewage works will be available for use by members of the general public. Use by a member of the general public means use by natural persons not engaged in a trade or business. No person or entity other than the Sanitary District or another state or local governmental unit will use more than 10% of the proceeds of the Bonds or BANs or property financed by the Bond or BAN proceeds other than as a member of the general public. No person or entity other than the Sanitary District or another state or local governmental unit will own property financed by Bond or BAN proceeds or will have any actual or beneficial use of such property pursuant to a lease, a management or incentive payment contract, arrangements such as take-or-pay or output contracts or any other type of arrangement that conveys other special legal entitlements and differentiates that person's or entity's use of such property from use by the general public, unless such uses in the aggregate relate to no more than 10% of the proceeds of the Bonds or BANs, as the case may be. If the Sanitary District enters into a management contract for the sewage works, the terms of the contract will comply with Internal Revenue Service Revenue Procedure 97-13, as it may be amended, supplemented or superseded for time to time, so that the contract will not give rise to private business use under the Code and the

Treasury Regulations promulgated thereunder, unless such use in aggregate relates to no more than 10% of the proceeds of the Bonds or BANs, as the case may be.

(b) No more than 10% of the principal of or interest on the Bonds or BANs is (under the terms of the Bonds or BANs, this resolution or any underlying arrangement), directly or indirectly, secured by an interest in property used or to be used for any private business use or payments in respect of any private business use or payments in respect of such property or to be derived from payments (whether or not to the Sanitary District) in respect of such property or borrowed money used or to be used for a private business use.

(c) No more than 5% of the Bond or BAN proceeds will be loaned to any person or entity other than another state or local governmental unit. No more than 5% of the Bond or BAN proceeds will be transferred, directly or indirectly, or deemed transferred to a nongovernmental person in any manner that would in substance constitute a loan of the Bond or BAN proceeds.

(d) The Sanitary District reasonably expects, as of the date hereof, that the Bonds and BANs will not meet either the private business use test described in paragraph (a) and (b) above or the private loan test described in paragraph (c) above during the entire term of the Bonds or BANs, as the case may be.

(e) No more than 5% of the proceeds of the Bonds or BANs will be attributable to private business use as described in (a) and private security or payments described in (b) attributable to unrelated or disproportionate private business use. For this purpose, the private business use test is applied by taking into account only use that is not related to any government use of proceeds of the issue (Unrelated Use) and use that is related but disproportionate to any governmental use of those proceeds (Disproportionate Use).

(f) The Sanitary District will not take any action nor fail to take any action with respect to the Bonds or BANs that would result in the loss of the exclusion from gross income for federal tax purposes on the Bonds or BANs pursuant to Section 103 of the Code, nor will the Sanitary District act in any other manner which would adversely affect such exclusion. The Sanitary District covenants and agrees not to enter into any contracts or arrangements which would cause the Bonds or BANs to be treated as private activity bonds under Section 141 of the Code.

(g) It shall not be an event of default under this resolution if the interest on any Bond or BAN is not excludable from gross income for federal tax purposes or otherwise pursuant to any provision of the Code which is not currently in effect and in existence on the date of issuance of the Bonds or BANs, as the case may be.

(h) These covenants are based solely on current law in effect and in existence on the date of delivery of such Bonds or BANs, as the case may be.

(i) The Sanitary District represents that it will rebate any arbitrage profits to the United States of America in accordance with and to the extent required by the Code.

Section 27. Amendments with Consent of Bondholders. Subject to the terms and provisions contained in this Section and Section 25(h), and not otherwise, the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds issued pursuant to this resolution and then outstanding shall have the right, from time to time, anything contained in this resolution to the contrary notwithstanding, to consent to and approve the adoption by the Sanitary District of such resolution or resolutions supplemental hereto as shall be deemed necessary or desirable by the Sanitary District for the purpose of modifying, altering, amending, adding to or rescinding in any particular any of the terms or provisions contained in this resolution, or in any supplemental resolution; provided, however, that nothing herein contained shall permit or be construed as permitting:

(a) An extension of the maturity of the principal of or interest on any Bond issued pursuant to this resolution; or

(b) A reduction in the principal amount of any Bond or the redemption premium or the rate of interest thereon; or

(c) The creation of a lien upon or a pledge of the revenues of the sewage works ranking prior to the pledge thereof created by this resolution; or

(d) A preference or priority of any Bond or Bonds issued pursuant to this resolution over any other Bond or Bonds issued pursuant to the provisions of this resolution; or

(e) A reduction in the aggregate principal amount of the Bonds required for consent to such supplemental resolution; or

(f) A reduction in the Reserve Requirement; or

(g) The extension of mandatory sinking fund redemption dates, if any.

If the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds outstanding at the time of adoption of such supplemental resolution shall have consented to and approved the adoption thereof by written instrument to be maintained on file in the office of the Board of the Sanitary District, no owner of any Bond issued pursuant to this resolution shall have any right to object to the adoption of such supplemental resolution or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the Sanitary District or its officers from adopting the same, or from taking any action pursuant to the provisions thereof. Upon the adoption of any supplemental resolution pursuant to the provisions of this section, this resolution shall be, and shall be deemed, modified and amended in accordance therewith, and the respective rights, duties and obligations under this resolution of the Sanitary District and all owners of Bonds issued pursuant to the provisions of this resolution then outstanding, shall thereafter be determined exercised and enforced in accordance with this resolution, subject in all respects to such modifications and amendments. Notwithstanding anything contained in the foregoing provisions of this resolution, the rights and obligations of the Sanitary District and of the owners of the Bonds authorized by this resolution,

and the terms and provisions of the Bonds and this resolution, or any supplemental resolution, may be modified or altered in any respect with the consent of the Sanitary District and the consent of the owners of all the Bonds issued pursuant to this resolution then outstanding.

Section 28. Issuance of BANs. The Sanitary District, having satisfied all the statutory requirements for the issuance of its Bonds, may elect to issue its BAN or BANs pursuant to a Bond Anticipation Note Purchase Agreement (the "BAN Purchase Agreement") to be entered into between the Sanitary District and the purchaser of the BAN or BANs. The Board hereby authorizes the issuance and execution of the BAN or BANs in lieu of initially issuing the Bonds to provide interim financing for the Projects until permanent financing becomes available. It shall not be necessary for the Sanitary District to repeat the procedures for the issuance of its Bonds, as the procedures followed before the issuance of the BAN or BANs are for all purposes sufficient to authorize the issuance of the Bonds and the use of the proceeds to repay the BAN or BANs.

The Mayor and the Controller are hereby authorized and directed to execute a BAN Purchase Agreement (and any amendments made from time to time) in such form or substance as they shall approve acting upon the advice of counsel. The Mayor, the Controller and officers of the Sanitary District may also take such other actions or deliver such other certificates as are necessary or desirable in connection with the issuance of the BANs or the Bonds and the other documents needed for the financing as they deem necessary or desirable in connection therewith.

Section 29. Resolution to be Filed with Controller. The Secretary to the Board of Sanitary Commissioners is hereby directed to file a certified copy of this resolution with the Controller for preparation of the Bonds.

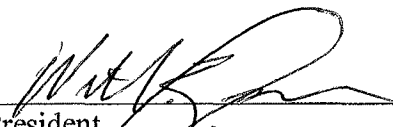
Section 30. Tax Exemption. Notwithstanding any other provisions of this resolution, the covenants and authorizations contained in this resolution (the "Tax Sections") which are designed to preserve the exclusion of interest on the BANs and Bonds from gross income under federal law (the "Tax Exemption") need not be complied with if the Sanitary District receives an opinion of nationally recognized bond counsel that any Tax Section is unnecessary to preserve the Tax Exemption. At the time of delivery of the BANs or Bonds, the President or Controller will execute post-issuance compliance procedures with respect to the BANs or Bonds, as the case may be, relating to continued compliance of the Sanitary District with respect to the Tax Sections to preserve the Tax Exemption.

Section 31. Conflicting Resolutions. All resolutions and parts of resolutions in conflict herewith are hereby repealed, provided, however, that this resolution shall not be construed as modifying, amending or repealing the resolutions authorizing the Outstanding Parity Bonds or as adversely affecting the rights of the holders of the Outstanding Parity Bonds.

Section 32. Effective Date. This resolution shall be in full force and effect from and after its passage.

Adopted this 31<sup>st</sup> day of October, 2013.

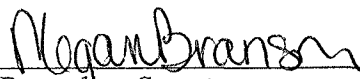
BOARD OF SANITARY COMMISSIONERS  
SANITARY DISTRICT OF THE  
CITY OF MUNCIE, INDIANA

  
\_\_\_\_\_  
President

  
\_\_\_\_\_

  
\_\_\_\_\_

ATTEST:

  
\_\_\_\_\_  
Recording Secretary

## EXHIBIT A

### Description of Project

The Project includes the acquisition, construction and installation of energy related upgrades at facilities owned by the Sanitary District including a controlled natural gas fueling station for use by vehicles of the Sanitary District and wastewater treatment plant improvements, including replacement of the blower and certain facilities related thereto.

EXHIBIT B

Form of Energy Savings Contract



## GUARANTEED ENERGY SAVINGS PERFORMANCE CONTRACT

THIS AGREEMENT (herein sometimes "Agreement" and sometimes "Contract"), made this 31<sup>st</sup> day of October, 2013, by and between Muncie Sanitary District, Muncie, Indiana (hereinafter called "Board of Sanitary Commissioners", "Customer" or "Owner") and Energy Systems Group, LLC, an Indiana limited liability company (hereinafter called "Contractor" or "ESG"),

WITNESSETH, That:

WHEREAS, Contractor has submitted to Owner a proposal for the construction and/or installation of energy related upgrades at facilities owned by Owner and located in Delaware County, Indiana (herein the "Facilities") in accordance with Indiana Code 36-1-12.5, as amended (the "Act"); and

WHEREAS, Owner wishes to accept Contractor's proposal as defined in Exhibit A Scope of Work (hereinafter "Project"), and Owner and Contractor desire to enter into this Agreement to memorialize their respective agreements and undertakings with respect to the Project, all in accordance with the Act.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements herein contained, the parties hereto agree as follows:

1. Contract Documents. The parties hereby incorporate by reference, as if fully set forth herein, the following documents and instruments, all of which together with this Agreement are herein referred to as the "Contract Documents":

- Exhibit A - Scope of Work
- Exhibit B - Energy Savings Guarantee and Measurement and Verification Plan
- Exhibit C - Opinion of Owner's Counsel
- Exhibit D - Prevailing Wage Determination

The Contract Documents also shall include any permissible change orders issued pursuant to this Agreement.

If there is a conflict between the provisions of this Agreement and any other Contract Document, the provisions of this Agreement shall control with respect to the subject matter hereof.

2. Scope of Project. For purposes hereof, the "Project" shall mean and include the installation of the energy conservation measures and related upgrades ("ECM's" or "Measures"), which are defined in Exhibit A, Scope of Work.

3. General Obligations and Rights of Contractor. Contractor shall do all acts and provide all things necessary to perform and complete the Project properly, in a good and workmanlike manner, and in compliance with all laws and regulations, including the Act. Contractor shall apply for, secure, and obtain all necessary permits and licenses which may be required in connection with the Project.

3.1 Warranty. Contractor hereby warrants to Owner that all materials furnished by Contractor and its subcontractors, if any, and all workmanship performed by Contractor and its subcontractors in connection with the Project, shall be in accordance with the general industry standards of the mechanical and electrical construction industry; shall be performed in a competent, good and workmanlike manner and in compliance with the Contract Documents, and all pertinent laws, rules and regulations; and shall be free from any and all faults or defects in material and workmanship. Contractor shall promptly remedy any and all defective materials or workmanship furnished by Contractor or any subcontractor upon receipt of written notice thereof from Owner. If required by Owner, Contractor shall furnish satisfactory evidence as to kind and quality of materials and equipment used in connection with the Project.

The warranty set forth herein shall continue to be effective for a period of one year following Owner's acceptance or beneficial use of each ECM, acceptance of a particular Facility, or acceptance of the Project, whichever comes first. Owner shall give Contractor written notice of all defective work, specifically detailing the deficiencies to be corrected, and Contractor shall repair or otherwise remedy such defective work in an expeditious manner.

EXCEPT AS PROVIDED IN SECTION 3.5 AND EXHIBIT B OF THIS AGREEMENT, CONTRACTOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. To the extent possible, Contractor shall assign to Owner all warranties that Contractor receives from its vendors and/or subcontractors for any materials or equipment, which are or are to become permanent features of the Project, which shall be in addition to the

other warranties provided herein.

3.2 Approvals. Upon completion of the Project, Contractor shall obtain all approvals of the installation of the Measures constituting the Project.

3.3 Indemnification. Contractor shall indemnify, defend, and hold harmless Owner, the agents, officers, employees, and representatives of Owner (herein the "Indemnified Parties") against all liability and loss including reasonable attorney's fees and expenses to the extent resulting from the negligence or willful misconduct in connection with the Project by Contractor, any subcontractor, or the agents, employees, or representatives of Contractor or any subcontractor, including any injury (including death) sustained by or any damage to the property of, any person; provided however, that Contractor shall not be responsible for any injury (including death), damage, or loss (including reasonable attorneys fees and expenses) that is caused by the sole negligence of an Indemnified Party, nor shall Contractor be held responsible for the concurrent negligence of an Indemnified Party.

Contractor agrees to indemnify, save and hold Owner, its successors and assigns, and any assignee of Contractor, harmless from the payment of any sum of money whatsoever (including reasonable attorneys fees and expenses) on account of any laborer's, mechanic's, materialmen's or any other lien against Owner's property related to Contractor's performance of the Project, unless the lien is caused by some fault of Owner or some person or entity acting on Owner's behalf.

Owner shall indemnify, defend and hold harmless Contractor, and the agents, officers, shareholders, directors, and employees of Contractor and any assignee of Contractor (herein the "Indemnified Parties") against all liability and loss including reasonable attorney's fees and expenses to the extent resulting from the negligence or willful misconduct in connection with the Project by Owner and agents, employees or representatives of Owner, including any injury (including death) sustained by or any damage to the property of, any person; provided, however, that Owner shall not be responsible for any injury (including death), damage or loss (including reasonable attorneys fees and expenses) which is caused by the sole negligence of an Indemnified Party, nor shall Owner be held responsible for the concurrent negligence of an Indemnified Party.

The indemnified party must provide prompt notice to the indemnitor of a claim or matter for which indemnification or defense (collectively, "Indemnification") is sought pursuant to this Section 3.3. In case of such notice, the indemnitor shall select counsel and control the defense and shall be permitted to settle the matter at indemnitor's expense. Notwithstanding the foregoing, the failure of the indemnified party to provide prompt notice of a claim or matter for which Indemnification is sought shall not affect the indemnitor's obligation hereunder to provide such Indemnification except and to the extent that the delay in providing notice prejudices indemnitor or indemnitor's obligation of Indemnification.

3.4 Bonds. Before entering upon the performance of this Agreement, Contractor shall execute for the benefit of Owner, a good and sufficient Performance Bond and Payment Bond, in form acceptable to Owner. Each bond shall be in an amount equal to the Contract Price (as defined below in Section 5 of this Agreement), and the provisions of the Act, as amended, if applicable to this Project, shall become a part of the terms of such bonds.

The Performance Bond shall also be a guarantee for the repair or replacement of any portion of the Project that is defective to and including the date of Owner's Final Acceptance of the Project. The Payment Bond shall be a guarantee for the payment for labor, materials and equipment furnished for use in the performance of Contractor's obligations hereunder. The Performance and Payment Bond will cease effective the date of Owner's Final Acceptance of the Project. Effective immediately after, a Maintenance Bond will be provided for the one-year period commencing on the date of Owner's Final Acceptance of the Project in the amount of 10% of the total Contract Price. The surety which executes the Performance Bond and Payment Bond shall waive any right to independent notice under this Agreement if Contractor receives such notice, and consents to any extensions of time, modification, waiver, forbearance, or change which may be made in any of the terms and conditions of the Agreement by the parties or by their successors or assigns. Notwithstanding any other provision of this Agreement or the bonds, in no event and in no manner shall coverage under the Performance Bond and Payment Bond extend to Section 3.5, Energy Savings Guarantee, as set forth in Exhibit B Energy Savings Guarantee and Measurement and Verification Plan, or any related provisions.

3.5 Guaranteed Savings. Contractor represents and warrants that the Project will result in energy and fuel savings in the amount of \$3,759,250 operational savings of \$217,500 and avoided capital cost savings of \$1,575,000.00 as outlined in Exhibit B Energy Savings Guarantee and Measurement and Verification Plan during the first fifteen (15) year period following completion of the Project. Contractor represents and warrants that such total savings in the amount of \$5,551,750.00 (herein the "Total Guaranteed Savings"), exceeds Owner's total cost of the Project. The parties agree that the Contractor's duty to deliver the Total Guaranteed Savings shall be considered fully satisfied upon Owner's Final Acceptance of the Project (as defined hereinafter). Contractor represents and warrants that term of the contract, fifteen (15) years from Owner's Final Acceptance of all Measures, is less than the average life expectancy of the Measures. As a condition precedent to commencement of the Project, Contractor shall execute and deliver the Energy Savings Guarantee in the form set forth as Exhibit B to this Agreement. The parties agree that Exhibit B Energy Savings Guarantee and Measurement and Verification Plan shall control the rights and responsibilities of each party with respect to the Energy Savings Guarantee. In the event of any conflict between this Section 3.5 and Exhibit B, Exhibit B shall control.

3.6 Limitation of Liability. The total liability of Contractor on all claims, whether in contract, warranty, tort, strict liability, indemnity, or otherwise, arising out of the performance of this Agreement, shall not exceed the Contract Price. NOTWITHSTANDING ANY OTHER PROVISION HEREIN TO THE CONTRARY, IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, SPECULATIVE, PUNITIVE, OR REMOTE DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, AND DOWN TIME COST.

3.7 Insurance.

3.7.1 Obtaining Proper Insurance. Contractor shall not commence performance hereunder until (i) it has obtained and Owner has approved all insurance coverage required by this Section 3.7; and (ii) Owner has been furnished with a certificate

of insurance properly evidencing and confirming that (a) Owner is an additional insured on Contractor's public liability and automobile liability policies, and (b) such insurance coverage is in effect and will not be canceled until the insurer endeavors to provide at least 30 days prior written notice to Owner, unless the cancellation is due to non-payment of premium, in which event the insurer will endeavor to provide 10 days prior written notice to Owner. In the event that subcontractors are not covered by Contractor's policies of insurance, each subcontractor shall secure policies of insurance which meet the requirements of this Section 3.7.

3.7.2 Amount of Insurance. Contractor shall take out and maintain, at its sole cost and expense, the following insurance coverage during the term of this Agreement and all other times during which Contractor, its employees, agents, or subcontractors shall be present at the Facilities, whether performing or correcting any portion of the Project:

(A) Worker's Compensation, Employer's Liability, and Occupational Disease Insurance. Statutorily required worker's compensation insurance, including employer's liability and occupational disease coverage, to the extent mandated by applicable state law, on all of Contractor's employees engaged in the Project;

(B) Public Liability. Commercial general liability insurance (including contractual, independent contractors, explosion, and product/completed operations coverages) against damage because of bodily injury, including death, or damage to property of others, such insurance to afford protection to the limit of not less than One Million Dollars (\$1,000,000.00) in one occurrence, and to the limit of not less than Two Million Dollars (\$2,000,000.00) annual aggregate;

(C) Automobile Liability. Automobile liability insurance against damage because of bodily injury, including death, or damage to property of others as the result of the operation of any automobile owned or hired by Contractor, with such

insurance to afford protection to the limit of not less than Five Hundred Thousand Dollars (\$500,000.00) for any one person, not less than One Million Dollars (\$1,000,000.00) in respect to any one accident, and not less than One Hundred Thousand Dollars (\$100,000.00) for property damage.

4. All Risk Insurance. Prior to Contractor's commencement of performance, Owner shall provide Contractor a certificate of insurance evidencing that Owner has in place an "All Risk" insurance policy on all its Facilities that will provide coverage for all installed Measures. If any of the Measures are damaged or destroyed after they are installed to Owner's Facilities, but prior to Final Acceptance of the Project, the proceeds of such insurance shall be provided to Contractor, and Contractor shall repair or replace such equipment, materials or Measures. If the proceeds of such insurance are insufficient to fully pay Contractor for its costs incurred to repair or replace such equipment, materials, or Measures, Owner shall promptly pay to Contractor such shortfall.

In addition, if any of the Measures are damaged or destroyed after Final Acceptance of the Project and during the Energy Savings Guarantee period, Owner shall be obligated to promptly repair or replace the damaged or destroyed Measures.

The certificates of insurance provided by Owner shall specify that such insurance coverages shall not be cancelled until the insurer endeavors to provide at least 30 days prior written notice to Contractor, unless the cancellation is due to non-payment of premium, in which event the insurer will endeavor to provide 10 days prior written notice to Contractor. Owner agrees to maintain in full force and effect the All Risk policy during the entire term of this Agreement.

4.1. Title and Risk of Loss. Risk of Loss for all equipment and materials provided by Contractor or any subcontractor shall transfer to Owner upon installation of such equipment and materials to Owner's Facilities. Title to a Measure shall vest with Owner upon installation and approving payment to Contractor. It is the intent of all parties that any transfer of title to Owner pursuant to this Agreement shall occur automatically without the necessity of any bill of sale, certificate of title, or other instrument of conveyance.

Owner shall be responsible for operating and maintaining all Measures that are installed. Owner shall also be responsible for any real or personal property taxes related to the Measures.

4.2 Waiver of Subrogation. Owner and Contractor hereby release each other and each other's employees, agents, and subcontractors from any and all liability for any loss of or damage or injury to person or property arising during the Project by reason of fire or other casualty or any other risk or cause which is or which is required to be insured against under this Agreement, regardless of cause, including the negligence of Owner or Contractor and their respective employees, agents, and subcontractors, and agree that all insurance carried by either of them shall contain a clause whereby the insurer waives its right of subrogation against the other party. Because the provisions of this paragraph are intended to preclude the assignment of any claim mentioned herein by way of subrogation or otherwise to an insurer or any other person, each party to this Agreement shall give to each insurance company which has issued to it one or more policies of insurance required by this Agreement notice of the provisions of this paragraph and have such insurance policies properly endorsed, if necessary, to prevent the invalidation of such insurance by reason of the provisions of this paragraph.

5. Contract Price and Payments.

5.1 Contract Price. In consideration of Contractor's performance of the work necessary for the completion of the Project, Contractor shall be paid the sum of Four Million Twenty Six Thousand One Hundred and Ninety Five Dollars and Zero Cents (\$4,026,195.00) (herein the "Contract Price"), in accordance with the provisions of this Section 5. The Contract Price shall include two contingency funds as specified in Section 5.1.1, from which the unspent balance will be divided between Owner and ESG, with Owner taking 60% of any unspent balance and ESG taking 40%. ESG will manage the contingency funds in consultation with the Owner and the Owner will approve the use of any contingency funds for purposes that are reasonable and necessary for ESG to accomplish the scope of work.

5.1.1 The contingency funds shall be as follows:

CNG Fueling Station contingency shall be \$119,851.59. WWTP contingency shall be \$24,462.90. Unused contingency funds will be shared between ESG and Owner as described in Section 5.1 above.



5.2 Concerning Payment of the Contract Price. The following provisions shall apply to payment of the Contract Price:

5.2.1 Applications for Payment. Payment of the Contract Price shall be made according to Schedule 2 Anticipated Payment Schedule. Owner shall pay or cause to be paid such invoice within 30 days of receipt. For payments not timely made, interest shall accrue at 10% per annum.

5.2.2 Completion and Inspection; Acceptance. When Contractor reasonably believes that an ECM, a Facility or the entire Project is complete, it shall notify Owner that such ECM, Facility or the entire Project is ready for inspection and acceptance. Within five business days following such notification, Owner shall commence to conduct such inspections as it deems necessary or appropriate in order to determine that the ECM, Facility, or the entire Project, as the case may be, is free from defects and that the installation of the ECM, Facility, or the entire Project, as the case may be, has been completed in conformity with the Contract Documents. If any aspect of the ECM, Facility, or the entire Project, as the case may be, shall be incomplete as of the date of such inspection, Owner shall notify Contractor in writing as to the items that render the ECM, Facility, or the entire Project, as the case may be, incomplete (such writing herein referred to as the "Punch List").

Contractor shall, at its expense and without further cost to Owner, undertake to perform such work as will complete the Punch List in compliance with the Contract Documents as soon as practicable. Contractor retains the right to dispute that an item or items on the Punch List is required by the Contract Documents. If Contractor does not satisfactorily complete the Punch List by a date 30 days following Owner's submission of the Punch List (herein the "Completion Date"), Owner shall have the right to order Contractor to stop any further work in respect of the particular ECM, Facility, or the entire Project, as the case may be, and Owner shall be entitled to complete the Punch List. In such event, Contractor shall be responsible for all costs incurred by Owner in completing the Punch List and Owner shall have the right to deduct all costs from any payment then

or thereafter due to Contractor. If such cost exceeds the balance of the Contract Price then or thereafter due Contractor, Contractor shall pay such excess to Owner within 10 days following Owner's demand therefor.

Owner will give Contractor prompt written notice of acceptance of a particular ECM, Facility or the entire Project, as the case may be, in the form of Schedule 1 (herein the "Final Acceptance"), when the following conditions have been met:

- A. Contractor shall have completed the Punch List to Owner's reasonable satisfaction and Contractor shall have corrected any other non-conforming items or condition, if any, reported to it by Owner;
- B. Contractor shall have furnished to Owner's reasonable satisfaction, evidence that all equipment and labor costs incurred or accrued in connection with a particular ECM or Facility have been paid; and
- C. Contractor shall have delivered to Owner all drawings and documents required to be furnished by Contractor pursuant to the Contract Documents.

5.2.3 Final Payment. Any sums due and owing in respect of the Contract Price shall be payable to Contractor within 10 calendar days after the date Owner gives written notice of its Final Acceptance of the entire Project.

6. Independent Contractor. It is understood and agreed by the parties hereto that Contractor shall perform the Project according to its own means and methods and shall for all purposes be an independent contractor. All persons employed by Contractor in connection with the Project shall be paid directly by Contractor, and shall be subject to Contractor's orders and supervision.

7. Inspection; Defective Work. Contractor shall provide sufficient, safe, and proper facilities at all times for the inspection of the work by Owner. It shall, within forty-eight hours after receiving written notice from Owner to that effect, proceed to remove from the Facilities all materials that fail to conform to

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the Contract Documents.

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## 8. Termination.

8.1 Owner's Right to Terminate. Should Contractor fail to perform any material term or condition of the Contract Documents, Owner shall be at liberty, after 30 days written notice to Contractor and Contractor's failure to remedy the problem within that time period, to terminate this Agreement and to enter upon the Facilities and take possession of the equipment and materials for the purpose of completing the work to be done under this Contract, to use all materials of Contractor available for such work, and to employ any other person or persons to finish the work and to provide such additional materials therefor as may be necessary, and in case of such termination of the employment of Contractor, Contractor shall not be entitled to receive any further payment under this Contract until the work shall be wholly finished, at which time if the unpaid balance of the amount to be paid under the Contract shall exceed the expense incurred by Owner in finishing the work, such excess shall be paid by Owner to Contractor, but if such expense shall exceed such unpaid balance, Contractor shall pay the excess to Owner. The expenses incurred by Owner as herein provided, either for the furnishing of materials or for finishing the work, and any damage incurred through such fault of Contractor shall be certified by Owner, and payment shall be made upon such certification.

8.2 Contractor's Right to Terminate or Stop Work. Should Owner fail to perform any material term or condition of the Contract Documents, Contractor shall be at liberty, after 30 days written notice to Owner and Owner's failure to remedy the problem within that time period, to terminate this Agreement or stop work. If Contractor elects to stop work, Contractor shall not be required to recommence work until such time as Owner has completely remedied its breach.

9. Delays. Should Contractor be obstructed or delayed in the prosecution or completion of the Project by the act, negligence, delay, or default of Owner or by any other damage, act or cause beyond the reasonable control of Contractor or any subcontractor, then the time herein fixed for the completion of the work shall be extended for a period equivalent to the time lost by reason of such event. If Contractor is delayed by actions or inactions of Owner or its agents or employees, Owner shall be required to reimburse Contractor for its additional costs incurred as a result of such delay.

10. Contractor to Furnish Required Statements. Contractor shall provide all statements, affidavits, waivers, and other instruments required by state or federal law or regulation or by local ordinances or rules, at such times and in the form required by said laws, regulations, ordinances, or rules, and Contractor hereby acknowledges receipt of notice from Owner to furnish same.

11. Nondiscrimination in Hiring Employees.

A. Contractor, any subcontractor, any supplier or any sub-supplier of a party to this Contract shall not discriminate against any employee or applicant for employment to be employed in the performance of this Contract with respect to his or her hire, tenure, terms, conditions, or privileges of employment or any matter directly or indirectly related to employment, because of his race, color, religion, sex, disability, national origin, or ancestry. Breach of this provision may be regarded as a material breach of this Contract.

B. Since this Contract involves the construction, alteration, or repair of a public building or public work, Contractor agrees:

(1) That in the hiring of employees for the performance of work under this Contract or any subcontract hereunder, Contractor, subcontractor or any person acting on behalf of Contractor or subcontractor shall not, by reason of race, religion, color, sex, national origin, or ancestry, discriminate against any citizen of the State of Indiana who is qualified and available to perform the work to which the employment relates;

(2) That Contractor, a subcontractor, or any person on his or their behalf shall not, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Contract on account of race, religion, color, sex, national origin, or ancestry;

C. Contractor or any subcontractor of Contractor shall be required to pay for each class of work on such project a scale of wages which shall in no case be less than the common construction wages being paid in the immediate locality for such class of work. As part of this Contract, there is incorporated by reference herein the prevailing scale of wages.

12. Miscellaneous Provisions.

12.1. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana, including, specifically, the Act.

12.2. Notices. Unless otherwise specifically provided herein, any notice, consent, request, demand, report or statement (herein "Notice"), which is required or permitted to be given to or served upon either party hereto by the other party hereto under any of the provisions of this Agreement shall be in writing and deemed to be duly delivered when (i) personally delivered to Contractor, or personally delivered to Owner in the case of a Notice to be given to Owner, or (ii) deposited in the United States mail, registered or certified, postage prepaid, and properly addressed as follows:

If to Owner: William Smith, District Administrator/Board President  
Muncie Sanitary District  
300 N High Street  
Muncie, IN 47305

If to Contractor: Gregory F. Collins, President  
Energy Systems Group LLC  
4655 Rosebud Lane  
Newburgh, Indiana 47630

Either party may change its address or its designated representative for receipt of notices by submitting a notice in compliance with this Section.

If Owner has questions about billing, invoices or any other accounting or related administrative issues, it can make contact (which will not constitute Notice) with:

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Dennis Perrey, Vice President, Finance & Administration  
Energy Systems Group, LLC  
4655 Rosebud Lane  
Newburgh, IN 47630  
(812) 492-3726  
dperrey@energysystemsgroup.com

12.3. Claims for Damages. Any claims by either party hereto for bodily injury or damage to personal property caused by any act or omission of the other party hereto or by any of such party's employees or agents or others for whose acts it is legally liable shall be made in writing to such other party within a reasonable time after the occurrence or first knowledge of such injury or damage.

12.4. Assignment. Neither party shall assign, transfer, pledge, or grant any security interest in, or otherwise dispose of, this Agreement or the equipment or any interest in this Agreement or the Equipment without first obtaining the other party's written consent. Subject to the foregoing, this Agreement shall inure to the benefit of and is binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto.

12.5. Waivers. The failure of either party hereto to insist upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provision or the relinquishment of any such rights unless such waiver is in writing and signed by both parties.

12.6. Remedies Cumulative. Each remedy provided for by the Contract shall be cumulative and in addition to every other remedy provided for herein, by law or in equity. Upon the occurrence of a default, hereunder, either party, or its assignee, may, at its option, exercise any right, remedy, or privilege which may be available to it under applicable law, including the right to (i) proceed by appropriate court action to enforce the terms of this Agreement, and (ii) recover damage for breach of this Agreement. Notwithstanding the exercise of any right, remedy or privilege, the parties shall remain liable for all covenants and indemnities under this Agreement.

12.7. Tests. If the Contract Documents or the laws, ordinances, rules, or regulations of any public authority having appropriate jurisdiction require inspection, testing, or approval of any of the work, Contractor shall give Owner timely notice of Contractor's readiness for such inspection, testing, or approval and of the date thereof so that Owner may be present to observe such inspection, testing, or approval by such public authority. Contractor shall be responsible for and pay all costs for any such inspection, testing, or approval unless otherwise provided for herein. All required licenses, permits, or certificates applicable to any such inspection, testing, or approval shall be obtained by Contractor and promptly delivered to Owner.

12.8. Hazardous Materials. If during the performance of the services related to the Project, the presence of Hazardous Materials is discovered or reasonable suspected, Contractor shall notify Owner of such discovery or suspicion and shall be permitted to immediately cease all work which requires contact with or exposure to such hazardous materials until Owner has inspected the same and Owner has made arrangements for the removal of the same at its expense. Contractor shall be entitled to an extension of the time fixed for the completion of the work equivalent to the time required to remediate such Hazardous Material. "Hazardous Materials" includes all hazardous or toxic substances or materials as may be so designated by federal, state or local governmental entities.

12.9. Amendments. No amendment, supplement, or modification hereof shall be effective for any purpose unless the same is in writing and signed by both parties hereto.

12.10. Headings. The headings of sections and subsections of this Agreement are for convenience of reference only and shall not affect the meaning or construction of any provision hereof.

12.11. Entire Agreement. This Agreement, together with the Contract Documents, represents the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, representations and agreements whether written or oral.



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12.12 Authority to Execute Contract. This Contract is executed by Owner pursuant to a resolution of Owner duly adopted at its regular meeting called and held on the 31<sup>st</sup> day of October, 2013.

**MUNCIE SANITARY DISTRICT**

By \_\_\_\_\_  
William Smith

Its \_\_\_\_\_  
District Administrator/Board President

ATTEST:

By \_\_\_\_\_

Its \_\_\_\_\_

**ENERGY SYSTEMS GROUP, LLC**

By \_\_\_\_\_  
Gregory F. Collins

Its \_\_\_\_\_  
President

ATTEST:

By \_\_\_\_\_

Its \_\_\_\_\_

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**SCHEDULE 1**

**ACCEPTANCE CERTIFICATE OR FINAL ACCEPTANCE CERTIFICATE**

(This is a sample form and will be modified, completed and signed after installation of an ECM, Facility or the entire Project, as the case may be)

Energy Systems Group, LLC  
4655 Rosebud Lane  
Newburgh, IN 47630

Re: Guaranteed Energy Savings Performance Contract, dated as of October 31, 2013 (the "Agreement"), between Energy Systems Group, LLC (the "Contractor") and Muncie Sanitary District (the "Owner").

Ladies and Gentleman:

In accordance with the Agreement, Owner hereby certifies and represents to, and agrees with, Energy Systems Group, LLC as follows:

The ECM (or ECM's), Facility (or Facilities), or the entire Project, as the case may be, (as defined in the Agreement) have been delivered, installed, and accepted as of \_\_\_\_\_ (the "Acceptance Date").

Owner has conducted such inspection and/or testing of the ECM (or ECM's), Facility or the entire Project, as the case may be, as it deems necessary and appropriate and hereby acknowledges that it accepts the ECM (or ECM's), Facility, or the entire Project, as the case may be, for all purposes.

No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Agreement) exists at the date hereof.

Sincerely,

**MUNCIE SANITARY DISTRICT**

By: \_\_\_\_\_  
William Smith

Its: \_\_\_\_\_  
District Administrator/Board President

Date: \_\_\_\_\_

## SCHEDULE 2

### ANTICIPATED PAYMENT SCHEDULE

Deposit – Due 15 Days from project financing completion      \$400,000.00

Balance of Contract Draw Schedule as follows:

|                  |     |
|------------------|-----|
| February 8, 2014 | 30% |
| March 8, 2014    | 35% |
| April 8, 2014    | 25% |
| Final Acceptance | 10% |

Final payment will be released upon Owner receiving a Certificate of Occupancy for the CNG Fueling Station, Owner's Final Acceptance and receipt of all As-Builts and O & M manuals.

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## EXHIBIT A SCOPE OF WORK

Base scope and pricing will cover all required permitting, site clearing, surveying, excavation, erosion control, asphalt, concrete (footings included), signage, Supervision and Project Management. All work will be in accordance with the Plans and Specifications provided by HWC Engineering and TruStar.

Project Management responsibilities will be communication, scheduling, financial management, quality control, safety and project closeouts.

This project is based on plans submitted to and approved by the Owner consisting of twelve pages from HWC dated 9-25-13 and nineteen pages from TruStar dated 8-1-13. This package of documents is referred to as the "permit set".

Energy Systems Group will provide Owner with a submittal schedule for review and approval. This Submittal Schedule will identify all materials, equipment, and shop drawings that ESG will be securing on both the CNG Fueling Station and The WWTP Project. Owner will review and approve these submittals and shop drawings before the release of materials.

Closeout documents will be provided with all Installation, Operation & Maintenance, and As-built drawings.

Use the table below to determine the production capability of this proposal  
COMPRESSOR PERFORMANCE CAPACITY [1 DGE = 1.39 Therms]

| Compressor | Per Min. Production GGE | Per Min. Production DGE | Per Hr. Production GGE | Per Hr. Production DGE | Per 4 Hr. Production GGE | Per 4 Hr. Production DGE | Per 8 Hr. Production GGE | Per 8 Hr. Production DGE |
|------------|-------------------------|-------------------------|------------------------|------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| 1          | 2.97                    | 2.69                    | 178.2                  | 161.44                 | 712.8                    | 645.76                   | 1425.6                   | 1291.52                  |
| 2          | 5.94                    | 5.38                    | 356.4                  | 322.88                 | 1425.6                   | 1291.52                  | 2851.2                   | 2583.04                  |
|            |                         |                         |                        |                        |                          |                          |                          |                          |
|            |                         |                         |                        |                        |                          |                          |                          |                          |

The Fast-Fill Station as quoted has the following dispensing capabilities.

### Equipment:

- Qty of Dispenser Cabinets: 2
- Qty of Standard Flow Hoses: 2
- Qty of Commercial High-Flow Hoses: 2

Performance Characteristics of Quoted Dispensers (fuel flow is divided when more than one hose is being utilized at the same time – i.e. two or more vehicles are fueling at the same time)

| Hose Type                  | Flow Rating                    | Hose QTY | GPM       | GPM per 15 min | GPM per Hour | GPM per 4 Hours |
|----------------------------|--------------------------------|----------|-----------|----------------|--------------|-----------------|
| Standard Flow Hoses        | Max. 14 GPM<br>Avg. Fill 5 GPM | 2        | 10        | 300            | 1200         | 4800            |
| Commercial High Flow Hoses | Max. 25 GPM<br>Avg. Fill 9 GPM | 2        | 18        | 540            | 2160         | 8640            |
| <b>Total</b>               |                                | <b>4</b> | <b>28</b> | <b>840</b>     | <b>3360</b>  | <b>13440</b>    |

The compression scenario is based off of an inlet pressure of 20 PSIG with adequate flow. Lower pressures will affect the production by lowering the per minute/hour production.

## UTILITY

### Phone Line

- Single phone line for communication package is required at the compressor staging area for communications package.
- A second phone line is required for customers using a gas broker for a telemetric meter.
- A third phone line is required for customers using a credit card reader for public fuel dispensing or private fleet information collection.

### Electrical Service –

- 1,000 amp electrical service is required at the compressor staging area from your Electric Utility provider - 277/480, 3 phase 4-wire service.

### Natural Gas Service –

- 20 psi pressure capable of delivering 44880 cubic feet of natural gas per hour, with the gas meter located at the compressor staging area. Note: (lower pressures can be acceptable for the production of CNG at the designated site location. Lower pressures will drop the hourly production rate of CNG.

We will install a 20 psi regulator after the meter set to protect the equipment against higher pressures.

## EQUIPMENT OVERVIEW

### COMPRESSOR: Quantity 2 Ariel - ANGI 300 JGQ 200 hp - 20 psi - 374 scfm

Compressor: Lubricated, Reciprocating, Balanced, Opposed

Number of Stages: 4

Manufacturer: Ariel - All weather enclosures included. Compressor is positioned so that access doors can be opened fully to access compressor and components inside enclosure.

### COMPRESSOR ENCLOSURE

1. The skid is enclosed by a powder-coated and insulated sheet metal enclosure system with wide access doors and removable panels.
2. Maximum emitted noise from the skid: 80 dBA @ 10' (typical for enclosed skids)
3. Enclosure Color: White
4. EXP Enclosure light
5. Second skid-mounted ESD
6. Forced-air area heater
7. Flame Detector
8. Catalytic-type area heater

### CONSTRUCTION

1. Piping 2" diameter and smaller is of "socket-weld" construction
2. Piping larger than 2" diameter shall be of butt weld construction with a minimum of 10% x-ray
3. Piping construction methods shall conform to ANSI B31.3
4. Flanged piping joints shall use spiral-wound, metallic gaskets
5. Tubing shall be of seamless ASTM-316 type of adequate pressure rating
6. Tube fittings 1/2" or smaller shall be Hoke® brand or Swagelok® brand
7. Tube fittings 1/2" or Larger shall be Parker "Seal-lok" fittings with face seal o-rings
8. All carbon steel surfaces shall be prepped and painted using an industrial epoxy paint
9. All components shall be suitably braced. Piping clamps shall be robust, "Stauf-type" clamps
10. All P & ID components shall be identified with a device label affixed to the device

### INLET SYSTEM

1. 3.0" x Class 150 ANSI RF Flange
2. Inlet Valve: API-607, Split-body ball valve with high performance seats and seals and high-torque actuator

### SKID CONSTRUCTION

1. Open skid made of welded, structural beams. Main beams are full-depth steel channel
2. CNC-machined and drilled compressor and motor mounting deck
3. Overhead cooler support
4. Hold-down bolt holes provided at six [6] locations
5. Inlet Filter: Particulate filter with serviceable, removable filter made of stainless steel mesh

## CAPTIVE RECOVERY SYSTEM

1. 100-gallon, 600 psig vertical tank captive recovery system for filter blow-down and starts/stops
2. The recirculation system includes a high-flow recirculation regulator, system relief valve and receiver tank drain

## GAS COOLING SYSTEM

1. Air-cooled, finned-type cooling coils are provided for inter-stage cooling and after cooling
2. Gas cooling will be achieved by means of high-efficiency stainless steel coils with aluminum fins
3. Coils will be designed to realize a 30°F approach temperature

## FILTRATION

1. Serviceable, high-flow particulate-grade filtration is provided on the inlet of the compressor, on each inter-stage circuit and prior to discharge
2. Coarse coalescing filters with stainless steel oil knock-out elements on each inter-stage circuit
3. Pre-coalescing and fine-coalescing final filters on the discharge circuit for oil elimination

## CONTROL SPECIFICATIONS

|  |   |
|--|---|
| Control System .....                             | ANGI-CCS Compressor Control System                            |
| PLC Make / Model .....                           | Horner Electric Model NX251 PLC                               |
| I/O Arrangement (Max I/O Indicated).....         | 16 DI /16 DO / 8AI / 4 AQ                                     |
| Mounting Location of Controller.....             | On-skid, mounted in NEMA 4 Enclosures                         |
| Electrical Classification of Control Panel ..... | Class I Div. II Per NEC, panel built to UL 508A               |
| Operator Interface .....                         | Panel mounted graphical display, pilot lamps and key switches |
| .....  | .....   |
| Available Network Connections.....               | CsCAN, Ethernet (GE Global Data), Modbus*, DeviceNet          |
| .....  | .....   |

## INSTRUMENTATION

|   |                               |
|---|-------------------------------|
| ANALOG - standard                                   | DIGITAL - standard            |
| - Inlet Pressure                                    | - Compressor Vibration Switch |
| - Discharge Pressure                                | - Compressor Oil Level        |
| - Inter-stage Discharge Pressure (1 per stage)      | - Compressor Lube Flow        |
| - Inter-stage Discharge Temperature (1 per stage)   | - Compressor Lube Temp.       |
| - Compressor Oil Pressure                           | - ESD Active                  |
| - Enclosure Gas Level                               |                               |
| - Receiver Tank HI Liquid Level Switch              |                               |
| - Receiver Tank Pressure Mini-Master Control Switch |                               |

## ELECTRIC MOTOR

Manufacturer - WEG or Equal / Operating Speed – 1785 rpm  
Reduced Voltage Siemens Soft Starter / 3 phase, 480/277 VAC Electric service required

## COMPRESSOR EQUIPMENT BASE AREA

Compressor pad area is composed of a minimum of 12-18" concrete base (depending on compressor configuration and local building codes). The compressor equipment base area will include compressors, storage, priority panel, inlet gas dryers and gas meter assembly.

The area inside the compressor compound (around the concrete equipment pads) is finished with a surface that matches the pre-construction surroundings, i.e., asphalt, concrete, gravel, etc. By code, the compressor area must be protected by bollards or continuously connected guardrail.

## ELECTRICAL EQUIPMENT BASE AREA

The electrical equipment will be located a minimum of 15' from the compressors and other gas-supplied equipment. The electrical area will contain the following items: Service Entrance Main Disconnect, Motor Starter Panel and Communications Panel for remote diagnostics.

## COMPRESSOR AND ELECTRICAL EQUIPMENT AREA PROTECTION

**Bollard Protection:** When choosing bollard protection, the compressor pad area will include 3' tall - 4" concrete-filled steel protective bollards anchored in an 18" diameter base, 3' in depth spaced 4' on center. The bollard is covered in a safety yellow plastic sleeve.

## INLET GAS DRYER: Color Change Moisture indicator, Heat Tracing for sub zero areas, NG SRD- 15-3 DDP - on skid Manual Regen -DUAL TOWER - 30 psi - 687 scfm

This dual vessel natural gas dryer with on-skid manual regeneration is ideal for drying natural gas for CNG stations that require constant use. While one vessel is on stream drying, the other vessel is regenerating or in standby mode and ready to be placed on stream. This unit will remove moisture from gas upstream of the natural gas compressor. A digital dew point meter is provided to indicate the effluent dew point confirming performance and need for regeneration. This dryer includes a pre-filter for removing dirt/aerosols and after-filter for removing desiccant dust. Includes a fully programmed PLC-based dryer control system. NEMA/NEC Electrical Construction Standard is designed to dry industry standard 7 ppm pipeline-quality natural gas.

## COMMUNICATION PACKAGE

Compressor outputs can be monitored remotely from a web-based connection via the web port. Compressor diagnostics and troubleshooting can be done from remote locations. The autodialer can be configured to notify up to 8 individuals in the event of an unplanned compressor shutdown. ANGI Controller model CP-400.

## MOTOR STARTER: Motor Starter - Dual 200 hp

The motor starter panel is designed to perform several different custom functions within the compressor design - as well as a soft start for your electric motor. The other functions include, but are not limited to: dryer power, enclosure power, gas detection power, time-fill panel power, cooling fan power, ESD for time-fill line power, and spares for future options.

## WINTER KIT

- Enclosure heaters on each compressor
- Compressors block heaters
- All heating elements to be thermostat controlled.

## EMERGENCY SHUTDOWN AND FIRE EXTINGUISHERS TO MEET BUILDING CODE

Shutdowns are located at compressor area and dispenser area.

- Includes Emergency Shutdown Switch at dispenser area
- 20 lb. Fire Extinguisher at dispenser area
- Safety Signs at dispenser area

## DIVIDED BUFFER STORAGE VESSELS: 2-Pak 24,000 cu ft & 1pk 12,000 cuft

Fiba or CPI Four-Vessel High pressure Assembly, 3-Pack Storage Assembly, 36,000 SCF @ 5,000 psig, 20" Diameter x 23'L ASME Vessel. Holds approximately 90 useable DGE. Two Tanks (24,000 cu. ft.) will be dedicated to fleet dispenser #1. One tank (12,000 cu. Ft.) will be dedicated to public dispenser #2. If a third dispenser is installed in the future, then additional storage tank capacity will be required.

## FAST-FILL PRIORITY PANEL: Quantity 1 x Fast-Fill High-Flow Priority Panel (1")

Priority panel capable of dispensing CNG for fast fill, is included for high-flow capability. 1" Cascade-Valve panel includes ESD valve mounted and racked to storage in NEMA 1 Panel.

## DISPENSERS: Quantity 2 x Gilbarco Monochrome DUAL-HOSE Combo Buffer

COMBO DUAL-HOSE 2000 scfm 1/2" mainline / 3500 scfm 3/4" mainline CNG dispenser housed within a Gilbarco Encore S with CRIND (Card Reader In Dispenser), monochrome (black and white) display. This dispenser includes standard holsters, 3600 fueling pressure and OPW CT1000 / CT5000 nozzles. This dispenser is designed for buffer-fill applications and utilizes a Micro Motion CNG 050 Flow Meter. Temperature compensation is set at 3600 PSIG at 70

### High-Pressure Piping

- High pressure piping from CNG storage tanks will be run below ground from the storage tanks at the compressor area to the dispenser
- Required trenching for high-pressure runs will be backfilled and replaced with like type surface material - concrete

### Dispenser Placement

- The dispenser will be located on an individual fueling island located within 100 feet of the compressor area.
- Concrete fueling Island will be approximately 3 feet wide and 8 feet in length.
- Dispenser is protected by concrete and steel bollards.
- Bollards are 8" diameter and 3' in ground/3' out of ground.

### PROVISIONS FOR FUTURE 3rd COMPRESSOR

Included: Concrete pad, trenching, installation of stainless high & low pressure lines with access through the concrete pad for ease of future connection, backfill, larger equipment compound (approximately 30'x30' larger), additional fencing, wiring conduits.

Items not included for a future third compressor are: Electrical wiring, motor starter, regulator, flex hose, storm switch, control valves in the priority panel. These items are never included unless there is a compressor present to use them.

### START UP AND TRAINING

TruStar Energy will provide on-site training on equipment to mechanics that will include all maintenance and operations requirements. Mechanic will work with TruStar Energy trainer during start up to understand all required maintenance and operations requirements.

Start Up will include Video Training.

### FACTORY TRAINING

One week [Monday thru Friday] of compressor maintenance training included at ANGI in Janesville, Wisconsin. Monday and Friday are designated as travel days, with Tuesday thru Thursday being dedicated to classroom and technical training. Customer pays travel and accommodations.

### DISPENSER PREP PACKAGES: Quantity (1) DUAL-HOSE Combo Single Line

Trenching, backfill, concrete islands with bollards, stainless high & low pressure lines and electrical conduit for future addition of a third dispenser to be added at a future date

### Canopy at fuel island

A 24' wide x 48' long x 17' high canopy will be installed over the fuel islands. The canopy will include a face to mount signage for public display. The canopy will include lighting to meet CNG & local code requirements, drainage and will be painted white. The canopy will be anchored in concrete footings with 2 structural columns located in the center fuel island. Includes a 2,400' square feet rectangle of 8" concrete under and surrounding the canopy.

### SITE LIGHTING, trenching/backfill & wiring

Area lighting: Qty. (7) 25' pole mounted LED light anchored to concrete caisson

Monument lighting: Qty. (2) Ground mounted LED flood lights

Canopy lighting Qty. (6) LED

### FENCING

6' galvanized fence surrounding the equipment compound with man gate. Installed within the bollards



## CLARIFICATIONS:

1. Energy Systems Group excludes all hazardous waste.
2. Energy Systems includes a one (1) year workmanship warranty from date of substantial completion.

## WASTEWATER TREATMENT PLANT (5150 Kilgore Avenue, Muncie, IN 47304)

1. Remove one (1) existing 500 hp multi-stage centrifugal blower labeled as #2. Remove corresponding 2300 volt motor starter. ESG will coordinate with Owner the disposal or relocation of existing blower.
2. ESG will provide a drawing that will identify the location of newly installed materials. The spec of these materials being installed and related scopes are as follows: Install one (1) new, 400 hp Neuros blower, model NX400-C060. Electrically connect using 480 volt spares in motor control center in blower room. Supply master blower aeration control panel. Blower air supply will be from room air with integral air filters in the new unit. An allowance up to \$100,000 is included in the project for this equipment. If during final engineering a smaller unit is selected a credit will be given to the owner for the difference in material costs. Unused funds from this allowance may be used for any project related work with Owner's permission.
3. Remove two (2) windows and add aluminum louvers.
4. Add Rotork electric actuators to twelve (12) existing butterfly air control valves on aeration headers. Electrically connect and wire for SCADA control.
5. Supply and install twelve (12) new luminescent dissolved oxygen sensors and transmitters. Reuse existing power and communications. Supply four new ammonia sensors and transmitters and connect to SCADA.
6. Supply and install twelve (12) new venturi air flow meters with transmitters in the air headers. Connect to SCADA.
7. Integrate new master aeration control panel into existing SCADA system.
8. Remove 9800 diffusers and install 6336 Sanitaire membrane diffusers. Seal and cap off all unused air headers.
9. Provide start-up, staff for training, one (1) year labor and material warranty. Start Up will include Video Taping.
10. Provide Autocad record drawings and three (3) set of hard copies of modifications to blower control room, P&ID drawings, and electrical.

## Exclusions

1. Aeration butterfly control valves. Existing valves will be reused.
2. Automatic dissolved oxygen control of existing blowers is excluded. If existing blowers are operated then the new blower will shut off and all valves will move to full open.
3. It is ESG's assumption based on the capacity of the plant not increasing that an IDEM permit is not required. Owner shall be responsible for any permitting changes.

## EXHIBIT B

### ENERGY SAVINGS GUARANTEE AND MEASUREMENT AND VERIFICATION PLAN

#### 1.0 DEFINITIONS

When used in this Agreement, the following capitalized words shall have the meanings ascribed to them below:

**"Acceptance of Installation"** means an authorized representative of the CUSTOMER has inspected and accepted that ESG installed Energy Conservation Measures are operational and comply with contract performance requirements and specifications. The CUSTOMER's acceptance shall not relieve ESG from responsibility for continued compliance with contract requirements during the contract term. The Acceptance of Installation shall occur after Substantial Completion.

**"Approval"** means the CUSTOMER has completed review of submittals, deliverables or administrative documents (e.g., insurance certificates, installation schedules, planned utility interruptions, etc.) and has determined that the documents conform to contract requirements. The CUSTOMER's approval shall not relieve ESG from responsibility for complying with contract requirements.

**"Energy Baseline"** shall be the energy consumption and costs prior to the installation of the energy conservation measures at the facilities. The baseline will consist of all base year energy bills applicable to the meters in the project defined for this project as January thru December 2012. It may also consist of any estimated usage for unmetered energy consumption.

**"Energy Conservation Measure (ECM)"** is defined as the installation of new equipment/facilities, modification and/or alteration of existing equipment/facilities or rate structures or revised operations and maintenance procedures intended to reduce energy consumption of facilities/energy systems, improve equipment efficiency or provide equipment that complies with existing standards.

**"Energy and Operational Savings"** is the sum of the Energy Savings and Operational Savings as defined herein.

**"Energy Costs"** shall mean charges for fuel adjustments, base services, transmission, tariffs, and distributions. The Energy Costs will normally be derived or imputed from the facility's utility bills. This method allows for updating savings calculations with changing rate schedules. In the event of a utility rate decrease, the utility rate(s) used to assign dollar cost will not drop below that of the base year.

**"Facilities"** shall mean those buildings and equipment from which the energy and operational cost savings will be realized.

"**Final Acceptance Date**" shall mean the date all of the ECM's or Measures comprising the Project (as defined in the Agreement) have been delivered, installed, and accepted by the CUSTOMER.

"**Guarantee Period**" is defined as the period beginning on the first (1<sup>st</sup>) day of the First Guarantee Year and ending on the last day of the Term.

"**Guarantee Year**" is defined as each of the successive twelve (12) month periods commencing on the anniversary of the commencement of the First Guarantee Year throughout the Term of this Agreement.

"**Guaranteed Savings**" is defined as the amount of Energy and Operational Cost Savings.

"**Installation Period**" is from the date of award to Substantial Completion.

"**Operational Costs**" shall include the costs associated with operating and maintaining the Facilities. Examples include the cost of inside and outside labor to repair and maintain systems and equipment, the cost of replacement parts, the cost of deferred maintenance, the cost of lamp and ballast disposal, and the cost of new capital equipment.

"**Retrofit Isolation Method**" (if applicable to this Project) refers to energy audit methodologies that require pre-retrofit and post-retrofit measurements to isolate energy consumption and costs of specific facility equipment and systems impacted exclusively by this Agreement.

"**Term**" shall be fifteen years.

"**Total Guarantee Year Savings**" is defined as the amount of Energy and Operational Savings realized by Facilities in each Guarantee Year as a result of the Work.

## 2.0 SAVINGS GUARANTEE

- 2.1 **Guarantee**. ESG and the Customer have agreed upon the savings shown in section 3.0.
- 2.2 **Savings Report**. The projects utility savings have been negotiated and agreed upon between the CUSTOMER and ESG. Table A in section 3.0 below outlines the source of the agreed upon savings as reduction to the accepted baseline. Upon final acceptance of the project all values presented in section 3.0 will be accepted as the final savings values requiring no further verification or reporting.
- 2.3 **Operational Savings**.- The operational cost savings for this project are determined by applying either industry standard values for parts replacement costs (in the case of lighting ECMs) and/or actual materials replacement costs, service agreement or contracted labor costs as documented and provided by CUSTOMER. The operational costs are agreed to and accepted by ESG and CUSTOMER and are described in Table A - Savings

Guarantee. There is no need to verify the agreed-upon operational savings. Operational savings will begin to accrue on the date of completion and acceptance of each ECM.

**2.4 Additional Savings.** ESG may identify other Energy and Operational Savings opportunities during the construction period or during any Guarantee Year. Additional Energy and Operational Savings that can be demonstrated as a result of ESG efforts that result in no additional costs to the CUSTOMER beyond the costs identified in this Agreement will be included in the annual Energy Services Guarantee Report for the applicable Guarantee Year(s).

**2.5 Savings Prior to Final Acceptance Date.** All Energy and Operational Savings realized by the CUSTOMER that result from activities undertaken by ESG prior to Final Acceptance Date, including any utility rebates or other incentives earned as a direct result of the installed energy conservation measures provided by ESG, will be applied toward all savings shortfalls before payment is made. Energy savings that are achieved by the upgrades and modifications in the Agreement prior to completion of the entire retrofit project (or construction savings) will be added to the first year actual energy savings amount.

### 3.0 SAVINGS GUARANTEE

The acceptance of this guarantee by the owner accepts Table-A as the correct agreed upon values over the established term.

ESG guarantees that the Work will result in the following sum of Total Guaranteed Year Savings over the Term.

**Table A – Guaranteed Savings**

|        | Year | Agreed Upon Diesel Fuel Savings | Agreed Upon Annual Electric savings | Agreed Upon Annual Operational Savings | Agreed Upon Capital Cost Avoidance | Total Agreed Upon Annual Savings |
|--------|------|---------------------------------|-------------------------------------|--|------------------------------------|----------------------------------|
| 1      | 2015 | \$151,649                       | \$63,211                            | \$12,000                               | \$105,000                          | \$331,860                        |
| 2      | 2016 | \$151,649                       | \$63,211                            | \$12,000                               | \$105,000                          | \$331,860                        |
| 3      | 2017 | \$151,649                       | \$63,211                            | \$12,000                               | \$105,000                          | \$331,860                        |
| 4      | 2018 | \$151,649                       | \$63,211                            | \$12,000                               | \$105,000                          | \$331,860                        |
| 5      | 2019 | \$151,649                       | \$63,211                            | \$12,000                               | \$105,000                          | \$331,860                        |
| 6      | 2020 | \$187,406                       | \$63,211                            | \$14,500                               | \$105,000                          | \$370,117                        |
| 7      | 2021 | \$187,406                       | \$63,211                            | \$14,500                               | \$105,000                          | \$370,117                        |
| 8      | 2022 | \$187,406                       | \$63,211                            | \$14,500                               | \$105,000                          | \$370,117                        |
| 9      | 2023 | \$187,406                       | \$63,211                            | \$14,500                               | \$105,000                          | \$370,117                        |
| 10     | 2024 | \$187,406                       | \$63,211                            | \$14,500                               | \$105,000                          | \$370,117                        |
| 11     | 2025 | \$223,162                       | \$63,211                            | \$17,000                               | \$105,000                          | \$408,373                        |
| 12     | 2026 | \$223,162                       | \$63,211                            | \$17,000                               | \$105,000                          | \$408,373                        |
| 13     | 2027 | \$223,162                       | \$63,211                            | \$17,000                               | \$105,000                          | \$408,373                        |
| 14     | 2028 | \$223,162                       | \$63,211                            | \$17,000                               | \$105,000                          | \$408,373                        |
| 15     | 2029 | \$223,162                       | \$63,211                            | \$17,000                               | \$105,000                          | \$408,373                        |
| Totals |      | \$2,811,085                     | \$948,165                           | \$217,500                              | \$1,575,000                        | \$5,551,750                      |

*The formulas for calculating each year's value are shown in Section 7.0*

#### 4.0 BASELINE UNIT ENERGY COSTS

Baseline energy units were developed by the blended average of the total cost over January 2012 to December 2012 for diesel fuel. The total fuel consumption was 82,297 gallons with a total annual cost of \$296,268.

The wastewater plant from November 2011 to October 2012 consumed 7,006,800 kilo-watt hours of electricity and total annual demand equaled 1,411 kilo-watts for a total cost of \$412,326.

**Table B – Energy Units**

| Utility Commodity (Unit)      | Cost Per Unit |
|-------------------------------|---------------|
| Electric Consumption (\$/kWh) | .050          |
| Electric Demand (\$/kW)       | 4.00          |
| Diesel (gallon)               | \$ 3.60       |

## 5.0 M&V APPROACH SUMMARY

Under this Agreement, savings are verified by engineering calculations that are agreed upon between the **CUSTOMER** and **ESG**, and were determined with consideration of the characteristics of the specific ECMs, acceptable accuracy, and reasonable cost. The actual energy savings will vary based on a number of factors. These factors include:

- Load on the System (occupancy and installed equipment)
- Hours of Operation
- Cost of fuel
- Consumption of diesel

Verification of Savings includes verifying that:

- Baseline conditions are properly defined
- Appropriate calculations and assumptions are utilized
- Equipment and/or systems contracted to be installed have been installed
- Installed equipment/systems meet specifications
- Installed equipment is operating and fully functional
- Installed equipment continues to operate as planned throughout the term of the contract

## 6.0 HOURS OF USE

Not applicable.

## 7.0 AGREED UPON ENERGY SAVINGS

All of the following savings have been negotiated and agreed upon between the **CUSTOMER** and **ESG**. The table below outlines the source of the agreed upon savings as reduction to the accepted baseline adjustment. Upon final acceptance of the project all values presented in Table C will also be accepted as the final savings values requiring no further verification or reporting. Agreed Upon Energy Savings based on approved engineering calculations based upon project variables will be the measurement and verification of energy savings methodology used for this project.

Table C – Source of Annual Agreed Upon Energy and Operational Savings

| Type                 | Description   | Unit Savings            | Annual Year 1 Dollar Savings |
|----------------------|---|-------------------------|------------------------------|
| Diesel Fuel          | By using compressed natural gas (CNG) as a fuel source rather than diesel the Customer will realize a fuel cost savings of 2.6 \$/diesel gallon equivalent (Dge) in savings. The savings are phased in as the Customer retires diesel vehicles and buys CNG ones. | 2.6 \$/Dge              | \$ 151,649                   |
| Electric             | The blower is rotated by an electric motor. The new equipment is variable speed and of higher efficiency and will use less annual energy as compared to the existing equipment technology.  | 1,139,356 kwh<br>130 kW | \$63,211                     |
| Operational          | The compressed natural gas vehicles require less maintenance on air emissions equipment than new diesel engines.  | n/a                     | \$12,000                     |
| Capital Avoided Cost | The project encompasses deferred maintenance and work that would have been completed under traditional capital improvement programs. This cost is amortized over fifteen years and shown as an annual cost.   | n/a                     | \$105,000                    |
| <b>ANNUAL TOTAL</b>  |   |                         | <b>\$331,860</b>             |

## CALCULATION METHODOLOGY

The annual energy and operational savings are based on a phased adoption of CNG vehicles with full fleet replacement over thirteen years. The table below shows the annual value for what percent of the fleet has been replaced. The formulas below demonstrate how the savings for each year are calculated in Table A.

Annual Agreed Upon Energy Savings = Annual Energy Dollar Savings (Table C) x Fleet Replacement (Table C.1)

Annual Operational Savings = Total Annual Operations Savings (Table D) x Fleet Replacement (Table C.1)

**Table C.1 – Fleet Replacement by Year**

| Year | Fleet Replacement (%) |
|------|-----------------------|
| 1    | 68%                   |
| 2    | 68%                   |
| 3    | 68%                   |
| 4    | 68%                   |
| 5    | 68%                   |
| 6    | 84%                   |
| 7    | 84%                   |
| 8    | 84%                   |
| 9    | 84%                   |
| 10   | 84%                   |
| 11   | 100%                  |
| 12   | 100%                  |
| 13   | 100%                  |
| 14   | 100%                  |
| 15   | 100%                  |



## BLOWER RETROFIT CALCULATION

### Description:

Replace one (1) 500 hp electric air blowers with one (1) new 300 hp units. Savings result from improved efficiencies, lower horsepower and variable flow capability.

### Guarantee Method:

The total annual savings is agreed upon and calculated based on the methodology below.

### Customer Responsibility:

The customer shall maintain the unit according to manufacturer's guidelines.

| <b>Variable Description</b>                                   | <b>Value</b> | <b>Unit</b>               |
|---|--------------|---------------------------|
| Current blower hp (HP1)                                       | 500          | horsepower                |
| Proposed blower hp (HP2)                                      | 400          | horsepower                |
| Hours per year of operation                                   | 8,760        | hours per year            |
| Average annual air flow                                       | SCFM         | from basis of design      |
| Average load of existing blower (load1)                       | 88.0%        |                           |
| Average load of new blower (load1)                            | 70.0%        | annual average conditions |
| Efficiency of existing blower motor (eff1)                    | 92.0%        | %                         |
| Efficiency of new blower motor (eff2)                         | 95.0%        | %                         |
| Cost of electrical consumption (kwh cost)                     | 0.05         | \$/kwh                    |
| Cost of electrical demand (kw cost)                           | 4            | \$/kw                     |
|   |              |                           |
| Existing annual kw = $hp1 / eff1 \times load1 \times 0.746$   | 357          | kw                        |
| Proposed kw = $hp2 / eff2 \times load2 \times 0.746$          | 220          | kw                        |
|   |              |                           |
| Annual kw saved = (existing kw - proposed kw) x 12            | 642.9        | kw                        |
| Annual kwh saved = (existing kw - proposed kw) x hours        | 1,199,322    | kwh                       |
|   |              |                           |
| Dollars savings = annual kw x kw cost + annual kwh x kwh cost |              |                           |
|   |              |                           |
| Annual Savings Grand Total                                    | \$66,537.74  |                           |
| Guarantee Level   | 95%          |                           |

|                                 |               |
|---------------------------------|---------------|
| Total Annual Guaranteed Savings | \$63,211 cost |
|                                 | 1,139,356 kwh |
|                                 | 130 kw        |

## 8.0 AGREED UPON OPERATIONAL SAVINGS AND CAPITAL COST AVOIDANCE

The operational cost savings for this project are negotiated and agreed upon by ESG and accepted by the CUSTOMER.

Table D – Source of Annual Agreed Upon Operational Savings and Capital Cost Avoidance

| Type                   | Description   | Annual Year 1 Operational Dollar Savings |
|------------------------|---|--|
| Operational Savings    | The compressed natural gas vehicles require less maintenance on air emissions equipment than new diesel engines.  | \$12,000                                 |
| Capital Cost Avoidance | The project encompasses deferred maintenance and work that would have been completed under traditional capital improvement programs. This cost is amortized over fifteen years and shown as an annual cost. | \$105,000                                |
| <b>TOTAL</b>           |   | <b>\$117,000</b>                         |

## 9.0 DOCUMENTATION FOR SECTION 179D TAX DEDUCTION

As a result of the implementation of this Project, certain tax deductions under Section 179D of the Internal Revenue Code may be available because of the energy efficient improvements to the Owner's buildings. The Owner agrees to allocate these Section 179D tax deductions to ESG to the extent such deduction arises from the technical specifications developed by ESG and the implementation of this Project.

Upon job completion, the Owner agrees to execute the required written allocation including the declaration related to this tax code provision. ESG will be responsible for preparing the declaration and all accompanying documentation for Owner's signature. ESG will be designated the Section 179D beneficiary.

## 10.0 ASSIGNMENT OF ENVIRONMENTAL ATTRIBUTES

As a result of the implementation of this Project, certain Environmental Attributes may be available, either now or in the future. This section specifies the process whereby the Owner will assign such Environmental Attributes to ESG.

"Environmental Attributes" means any and all credits, deductions, benefits, emission reductions, incentives, offsets, and allowances, howsoever entitled, attributable to and arising from the

implementation of this Project, whether such Environmental Attributes now exist or are developed in the future. Environmental Attributes include but are not limited to: (1) Any avoided emissions of pollutants to the air, soil, or water; (2) Any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>) and other greenhouse gases (GHGs); (3) Section 45 credits; (4) green tags; (5) renewable energy credits; and (6) The reporting rights to these avoided emissions such as White Tag Reporting Rights. Environmental Attributes also include any energy, capacity, reliability, or other energy reduction attributes that result from the implementation of this Project.

All Environmental Attributes arising from the implementation of this Project shall be owned by ESG. Owner agrees to execute all required documentation to assign all Environmental Attributes to ESG. If any filings are required with the Internal Revenue Service or some other governmental entity to obtain the benefits of the Environmental Attributes, Owner hereby instructs ESG to prepare and file such documents.

## 11.0 DISPUTE RESOLUTION

The M&V plan has been reviewed and accepted by CUSTOMER. It is the primary document for the M&V process. If a dispute arises under this M&V agreement, the parties shall promptly attempt in good faith to resolve the dispute by negotiation. If not settled by negotiation, this M&V plan will be referred to as the means to solve related disputes.

### MUNCIE SANITARY DISTRICT

By \_\_\_\_\_  
William Smith

Its \_\_\_\_\_  
District Administrator/Board President

### ENERGY SYSTEMS GROUP, LLC

By \_\_\_\_\_  
Gregory F. Collins

Its \_\_\_\_\_  
President

**DRAFT**

**EXHIBIT C**

**OPINION OF OWNER'S COUNSEL  
(TO BE TYPED ON COUNSEL'S LETTERHEAD)**

Energy Systems Group, LLC  
And It's Assignee  
4655 Rosebud Lane  
Newburgh, IN 47630

Ladies and Gentlemen:

I am counsel for the Muncie Sanitary District ("Owner"). In order to render this opinion I have reviewed the Guaranteed Energy Savings Performance Contract (the "Agreement"), dated as of October 31, 2013, between Owner and Energy Systems Group, LLC ("Contractor"), and other documents and instruments related to the Agreement or otherwise necessary to render this opinion, as well as all proceedings taken by Owner in connection with the Agreement. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement. Based upon the foregoing it is my opinion that:

1. Owner is a duly organized and validly existing political subdivision of the State of Indiana and is a political subdivision within the meaning of Section 103 of the Internal Revenue Code and related regulations and rulings.
2. Owner has the power and authority to execute and perform the Agreement and to purchase ECM's from Contractor thereunder.
3. The Agreement and related instruments and documents:
  - (a) Have been duly authorized by appropriate resolutions;
  - (b) Do not contravene and will not violate or result in a default under any charter, certificate of incorporation, by-laws, indenture, or any other agreement or instrument by which Owner or its property is bound or to which Owner is a party;
  - (c) The Agreement has been duly executed by the duly authorized officers of Owner, and do and will constitute the legal, valid, and binding obligations of Owner enforceable against Owner in accordance with their respective terms.
4. No approval or consent is required from any governmental authority with respect to the entering into or performance by Owner of the Agreement and the transactions contemplated thereby or if any such approval is required it has been duly obtained.

**DRAFT**

5. No litigation or other proceedings are pending or, to the best of my knowledge, threatened against Owner which would adversely affect Owner's legal title to the ECM's or, if decided adversely to Owner, would materially affect its financial condition.

This opinion is for the benefit of the addressee and any Assignee, and you and such Assignee and any counsel engaged by you or such Assignee shall be entitled to rely hereupon, including such counsel's reliance hereupon in giving its opinion addressed to other persons.

Very truly yours,

**DRAFT**

## EXHIBIT D

### PREVAILING WAGE DETERMINATION

#### Associated Builders and Contractors of Indiana

##### Delaware County – 2013

| <u>Classifications</u>                | <u>Classes</u>   | <u>Wage</u> | <u>Fringe</u> | <u>Total</u> |
|---------------------------------------|--|-------------|---------------|--------------|
| <b>Asbestos Abatement</b>             |  |             |               |              |
|                                       | -Removes and discards asbestos materials   |             |               |              |
|                                       | Skilled  | 23.75       | 6.90          | 30.65        |
|                                       | Semi-skilled   | N/A         | N/A           | N/A          |
|                                       | Unskilled  | N/A         | N/A           | N/A          |
| <b>Brick/Block/Stone/Cement Mason</b> |  |             |               |              |
|                                       | -Lays and sets building materials, brick and stone, and finishes surfaces          |             |               |              |
|                                       | Skilled  | 22.05       | 6.22          | 28.27        |
|                                       | Semi-skilled   | 16.11       | 5.37          | 21.48        |
|                                       | Unskilled  | 11.28       | 4.08          | 15.36        |
| <b>Carpenter</b>                      |  |             |               |              |
|                                       | -Constructs, erects, installs and repairs various woods and wallboards             |             |               |              |
|                                       | Skilled  | 20.83       | 5.13          | 25.96        |
|                                       | Semi-skilled   | 12.98       | 4.67          | 17.65        |
|                                       | Unskilled  | 10.90       | 4.00          | 14.90        |
| <b>Interior Finish Technician</b>     |  |             |               |              |
|                                       | -Erects metal framing, installs drywall, seals and plasters                        |             |               |              |
|                                       | Skilled  | 19.00       | 4.72          | 23.72        |
|                                       | Semi-skilled   | 12.66       | 4.25          | 16.91        |
|                                       | Unskilled  | 10.30       | 3.65          | 13.95        |
| <b>Electrician</b>                    |  |             |               |              |
|                                       | -Plans, installs, and repairs wiring, fixtures, lines and instrumentation controls |             |               |              |
|                                       | Skilled  | 23.99       | 6.47          | 30.46        |
|                                       | Semi-skilled   | 16.11       | 5.22          | 21.33        |
|                                       | Unskilled  | 12.02       | 4.44          | 16.46        |
| <b>Sound and Communication</b>        |  |             |               |              |
|                                       | -Installs data hardwiring  |             |               |              |
|                                       | Skilled  | 19.05       | 5.41          | 24.46        |
|                                       | Semi-skilled   | 13.00       | 4.20          | 17.20        |
|                                       | Unskilled  | 10.40       | 3.60          | 14.00        |
| <b>Glazier</b>                        |  |             |               |              |
|                                       | -Installs glass in windows or on surfaces  |             |               |              |
|                                       | Skilled  | 20.05       | 4.08          | 24.13        |
|                                       | Semi-skilled   | 11.25       | 3.21          | 14.46        |
|                                       | Unskilled  | 9.12        | 2.75          | 11.87        |
| <b>Mechanical Insulator</b>           |  |             |               |              |
|                                       | -Covers, seals, fits, measures, cuts, and attaches insulating materials            |             |               |              |
|                                       | Skilled  | 22.60       | 5.76          | 28.36        |
|                                       | Semi-skilled   | 13.90       | 5.14          | 19.04        |
|                                       | Unskilled  | 11.13       | 4.15          | 15.28        |

Delaware County – 2013 (Continued) Associated Builders and Contractors of Indiana

| <u>Classifications</u>  | <u>Classes</u>  | <u>Wage</u> | <u>Fringe</u> | <u>Total</u> |
|-------------------------|---|-------------|---------------|--------------|
| Iron Worker             | -Raises, places, and unites girders and columns of structural steel                         |             |               |              |
|                         | Skilled   | 24.00       | 6.75          | 30.75        |
|                         | Semi-skilled  | 17.79       | 6.04          | 23.83        |
|                         | Unskilled   | 13.00       | 4.18          | 17.18        |
| Metal Building Mechanic | -Assembles prefabricated metal buildings  |             |               |              |
|                         | Skilled   | 20.05       | 5.26          | 25.31        |
|                         | Semi-skilled  | 12.88       | 4.50          | 17.38        |
|                         | Unskilled   | 10.60       | 3.90          | 14.50        |
| Millwright              | -Installs machinery and equipment   |             |               |              |
|                         | Skilled   | 21.90       | 5.36          | 27.26        |
|                         | Semi-skilled  | 13.80       | 4.70          | 18.50        |
|                         | Unskilled   | 11.42       | 4.00          | 15.42        |
| Painter                 | -Applies various liquid coverings to surfaces   |             |               |              |
|                         | Skilled   | 19.34       | 4.95          | 24.29        |
|                         | Semi-skilled  | 12.14       | 3.95          | 16.09        |
|                         | Unskilled   | 9.95        | 3.00          | 12.95        |
| Roofer                  | -Covers roof with roofing materials   |             |               |              |
|                         | Skilled   | 19.79       | 5.00          | 24.79        |
|                         | Semi-skilled  | 12.32       | 4.35          | 16.67        |
|                         | Unskilled   | 9.80        | 3.68          | 13.48        |
| Sprinkler Fitter        | -Installs and repairs fire protection systems   |             |               |              |
|                         | Skilled   | 22.95       | 6.52          | 29.47        |
|                         | Semi-skilled  | 14.12       | 5.39          | 19.51        |
|                         | Unskilled   | 11.07       | 4.18          | 15.25        |
| Floor Coverer/Setter    | -Sets tile and terrazzo, applies pigment and marble, and lays carpet                        |             |               |              |
|                         | Skilled   | 18.61       | 4.66          | 23.27        |
|                         | Semi-skilled  | 11.95       | 4.00          | 15.95        |
|                         | Unskilled   | 9.85        | 3.53          | 13.38        |
| Truck Driver            | -CDL-licensed to transport equipment, liquid, packaged or granular dirt and moves personnel |             |               |              |
|                         | Skilled   | 16.50       | 5.00          | 21.50        |
|                         | Semi-skilled  | N/A         | N/A           | N/A          |
|                         | Unskilled   | N/A         | N/A           | N/A          |

**Delaware County -- 2013 (Continued) Associated Builders and Contractors of Indiana**

| <u>Classifications</u>  | <u>Classes</u>   | <u>Wage</u> | <u>Fringe</u> | <u>Total</u> |
|---|--|-------------|---------------|--------------|
| <b>Operating Engineer</b>   |  |             |               |              |
|   | -Operates all types of power construction and heavy equipment  |             |               |              |
|   | Skilled  | 23.27       | 6.88          | 30.15        |
|   | Semi-skilled   | 15.12       | 5.44          | 20.56        |
|   | Unskilled  | N/A         | N/A           | N/A          |
| * Not a practice in the industry to put unskilled workers on pieces of equipment* |  |             |               |              |
| <b>Mechanical Technician (HVAC, Sheet Metal)</b>                                  |  |             |               |              |
|   | -Fabricates, assembles, installs, and repairs sheet metal products and HVAC equipment  |             |               |              |
|   | Skilled  | 22.90       | 6.09          | 28.99        |
|   | Semi-skilled   | 16.12       | 5.00          | 21.12        |
|   | Unskilled  | 11.60       | 4.09          | 15.69        |
| <b>Pipe Worker (Plumber, Pipefitter)</b>  |  |             |               |              |
|   | -Fabricates, assembles, installs and maintains piping and piping systems, fixtures and equipment for processing systems and drainage systems |             |               |              |
|   | Skilled  | 24.41       | 6.82          | 31.23        |
|   | Semi-skilled   | 16.70       | 6.00          | 22.70        |
|   | Unskilled  | 13.22       | 4.80          | 18.02        |
| <b>Elevator Constructor</b>   |  |             |               |              |
|   | -Installs and repairs elevator equipment   |             |               |              |
|   | Skilled  | 26.05       | 6.84          | 32.89        |
|   | Semi-skilled   | 19.40       | 5.90          | 25.30        |
|   | Unskilled  | 13.70       | 5.15          | 18.85        |
| <b>General Labor</b>  |  |             |               |              |
|   | -Laborers and helpers, in general  |             |               |              |
|   | Skilled  | 16.24       | 4.05          | 20.29        |
|   | Semi-skilled   | 10.80       | 3.05          | 13.85        |
|   | Unskilled  | 9.40        | 2.65          | 12.05        |

**Project Name:** \_\_\_\_\_

Common Wage Committee:

Dated this day:

\_\_\_\_\_  
Representing Associated Builders  
and Contractors of Indiana

\_\_\_\_\_  
Awarding Agency (Industry Rep)

\_\_\_\_\_  
Indiana AFL-CIO

\_\_\_\_\_  
Awarding Agency (Taxpayer)

\_\_\_\_\_  
Commissioners-County (Taxpayer)



EXHIBIT C

Form of Bond Purchase Agreement

CITY OF MUNCIE, INDIANA

\$ \_\_\_\_\_  
SANITARY DISTRICT REVENUE BONDS, SERIES 2013 B

**BOND PURCHASE AGREEMENT**

\_\_\_\_\_, 2013

Board of Sanitary Commissioners  
Muncie Sanitary District  
300 North High Street  
Muncie, IN 47305

Dear Members of the Board of Commissioners:

The undersigned, [Banc of America Public Capital Corp] (the "Purchaser"), hereby offers to enter into the following agreement with the Sanitary District of the City of Muncie, Indiana (the "Sanitary District"), which, upon acceptance of this offer, will be binding upon the Sanitary District and the Purchaser. This offer is made subject to acceptance on or before 5:00 P.M. Eastern Standard Time, \_\_\_\_\_, 2013.

1. Upon the terms and conditions and upon the basis of the respective representations and covenants hereafter set forth, the Purchaser hereby agrees to purchase from the Sanitary District, and the Sanitary District hereby agrees to sell to the Purchaser all, but not less than all, of the \$ \_\_\_\_\_ in aggregate issued amount of the City of Muncie, Indiana Sanitary District Revenue Bonds, Series 2013 B (the "Bonds"). The Bonds shall be dated as of the date of delivery, shall mature in such amounts, bear interest at such rates to their stated maturities, be in such denominations and be subject to redemption as set forth in **Schedule A** attached hereto and made a part hereof. [If the interest on the Bonds becomes taxable to the Purchaser for any reason, the Sanitary District will pay to the Purchaser a taxable rate sufficient to maintain the tax-exempt yield on the Bonds.]

2. The initial purchase price of the Bonds shall be \$ \_\_\_\_\_. [The Sanitary District hereby agrees to pay the legal expenses of the Purchaser in the amount of \$10,000 from proceeds of the initial purchase price of the Bonds].

3. The Bonds shall be authorized and secured by, and issued under, a Bond Resolution, adopted by the Board of Sanitary Commissioners of the Sanitary District on October 31, 2013 (the "Bond Resolution"), drafted by Bose McKinney & Evans LLP, Indianapolis, Indiana, Bond Counsel, and approved by the Purchaser.

4. The Purchaser agrees to provide a “sophisticated investor” letter to the Corporation at Closing (as hereinafter defined) in the form set forth in **Schedule B** attached hereto and made a part hereof.

5. The Bonds, registered in the name of the Purchaser, shall be delivered to the Purchaser at the offices of Bond Counsel, Bose McKinney & Evans LLP, Indianapolis, Indiana, or at such other location as the Purchaser shall direct, on \_\_\_\_\_, 2013, at which time the Purchaser shall pay the payment price in full to an account specified by the Sanitary District. Such delivery and payment is referred to herein as the “Closing”.

6. The Purchaser shall have the right to cancel its obligation to purchase the Bonds if between the date hereof and the date of Closing, (i)(A) legislation shall be introduced in Congress, or enacted or actively considered for enactment by the Congress, or recommended to the Congress for passage by the President of the United States, or favorably reported for passage to either House of the Congress by any committee of such House, or (B) a decision by a Federal court of the United States or the United States Tax Court shall be rendered, or a ruling or regulation by or on behalf of the Treasury Department of the United States, the Internal Revenue Service or other governmental agency shall be made or proposed with respect to Federal taxation upon revenues or other income to be derived by the Corporation or upon interest on obligations of the general character of the Bonds, or (C) other actions or events shall have occurred or transpired, any of which has the purpose or effect, directly or indirectly, of materially adversely affecting the Federal or Indiana income tax or other Indiana tax consequences of any of the transactions contemplated in connection herewith, and in the reasonable judgment of the Purchaser materially adversely affects the market for the Bonds, or (ii) there shall have occurred any outbreak of hostilities or any national or international calamity or crises, including a financial crisis, the effect of which on the financial markets of the United States being such as would in the reasonable judgment of the Purchaser materially adversely affect the market for the Bonds, or (iii) there shall be in force a general suspension of trading on the New York Stock Exchange or a general banking moratorium shall have been declared by Federal, Indiana or New York authorities, the effect of which would, in the reasonable judgment of the Purchaser, materially adversely affect the market for the Bonds, or (iv) there shall have occurred, since the date hereof, any material adverse change in the affairs of City from that reflected in the financial statements of the Sanitary District delivered in connection with the Bonds.

7. The Sanitary District hereby represents and warrants to the Purchaser that it is authorized by law to enter into this Bond Purchase Agreement and the documents herein referred to and to perform all of its obligations to consummate the transactions contemplated hereby and thereby. The Sanitary District agrees that it shall take all necessary action to authorize the execution and delivery of, and shall execute and deliver the Bonds, the Bond Resolution and any and all other agreements, certificates, and documents as may be required to consummate the transactions contemplated hereby. Any certificate signed by an authorized officer of the Sanitary District and delivered to the Purchaser shall be deemed a representation and warranty by the Sanitary District to the Purchaser as to statements made therein.

8. The Purchaser hereby represents and warrants to the Sanitary District it has been duly authorized to execute this Bond Purchase Agreement, and to carry out the terms of this Bond Purchase Agreement.

9. The obligations of the Purchaser hereunder shall be subject to:

(a) The performance by the Sanitary District of its obligations to be performed hereunder at and prior to the Closing;

(b) The accuracy of the warranties and representations of the Sanitary District,  
and

(c) Delivery to the Purchaser of executed counterparts of the following documents in such number as shall be reasonably required and in form and substance satisfactory to the Purchaser:

(1) The Bond Resolution.

(2) The unqualified approving opinion of Bond Counsel in customary market form, dated the date of Closing, relating to the due authorizations, execution, and delivery of the Bond Resolution, the Bonds (and any documents relating to the issuance and security therefor), the tax-exempt status of interest on the Bonds for Federal income tax purposes, and such other matters as are customarily provided in such opinions.

(3) Such additional legal opinions, bonds, proceedings, and such other documents, including references to the provisions of the Internal Revenue Code of 1986, as amended, as Bond Counsel or the Purchaser may reasonably request to evidence compliance by the Sanitary District with legal requirements, the truth and accuracy of their representations herein, the accuracy and completeness of the Official Statement as of the Closing and the due performance or satisfaction by the Sanitary District at or prior to the Closing of all agreements then to be performed and all conditions then to be satisfied by the Sanitary District.

10. Incident to the issuance of the Bonds, and whether the Bonds are delivered to the Purchaser or not, the Purchaser agrees to pay the expenses of forming and managing a national selling group, if such group is formed, any advertising in connection with selling or placing the Bonds, the costs of registering the Bonds or confirming exceptions from registration in any jurisdiction and the costs of preparing Blue Sky and Legal Investment Memoranda, MSRB fees, if any, and other out-of-pocket expenses. The Sanitary District shall pay, or cause to be paid, from the proceeds of the sale of the Bonds the fees and disbursements of Bond Counsel, counsel to the Sanitary District, counsel to the Purchaser, financial advisor/verification agent to the Sanitary District, the fees of the rating agencies, if any, the cost of printing and delivery of

definitive Bonds, the cost of CUSIP numbers, if any, DTC/Midwest charges, if any, and the costs and expenses of the issuance and delivery of the Bonds.

11. All representations, warranties, and agreements of the Sanitary District shall remain in full force and effect regardless of any investigations made by or on behalf of the Purchaser and shall survive the Closing.

12. No recourse under or upon any obligatory covenant or agreement contained in this Bond Purchase Agreement or to be implied therefrom shall be had against any officer, trustee, employees agent or representative of the Sanitary District; and no personal liability whatsoever shall attach to or be incurred by the present or any future officers, directors, employees, agents or representatives of the Sanitary District by reason of any of the obligations, covenants or agreements contained or this Bond Purchase Agreement, or to be implied therefrom.

13. Any notice or other communication to be given to the Sanitary District shall be given by delivering the same in writing at the address set forth above and any notice or other communication to be given to the Purchaser shall be given in writing to [Banc of America Public Capital Corp, 135 South LaSalle Street, 10<sup>th</sup> Floor, IL4-135-10-42, Chicago, Illinois 60603, Attn: Geoffrey R. Culm, Senior Vice President].

This Bond Purchase Agreement is made solely for the benefit of the parties hereto, and no other person, including any holders of the Bonds, shall acquire or have any right hereunder or by virtue hereof.

The approval and acceptance of this offer by the Sanitary District, as evidenced by the execution of the acceptance clause below, shall cause this document to constitute a contract for the sale by the Sanitary District and the purchase by the Purchaser of the herein-described Bonds, subject to and in accordance with the terms and conditions herein outlined and established.

Respectfully submitted,

[Banc of America Public Capital Corp], as  
Purchaser

By: \_\_\_\_\_

*(Signature Page to Bond Purchase Agreement)*

Accepted by the Sanitary District of Muncie, Indiana, this \_\_\_\_ day of \_\_\_\_\_,  
2013.

**CITY OF MUNCIE, INDIANA**

By: \_\_\_\_\_  
Dennis Tyler, Mayor

By: \_\_\_\_\_  
Audrey Jones, Controller

**SCHEDULE A**

Designation: City of Muncie, Indiana  
Sanitary District Revenue Bonds, Series 2013 B

Principal Amount: \$ \_\_\_\_\_

Denominations: \$100,000 and any \$1 integral multiple in excess thereof

Dated: \_\_\_\_\_, 2013

Maturities and Interest Rates: Maturing semiannually on January 1 and July 1, with interest payable semiannually on January 1 and July 1 of each year, commencing \_\_\_\_\_ 1, 2014, in the years and amounts and with interest rates, as shown below

| <u>Maturity</u> | <u>Amount</u> | <u>Interest Rate</u> |
|-----------------|---------------|----------------------|
| *               | \$            | %                    |

\* Term Bonds - Mandatory Sinking Fund Redemption

The Bonds maturing on \_\_\_\_\_ 1, 20\_\_ are subject to mandatory sinking fund redemption prior to maturity on the dates and in the amounts set forth below at a price equal to 100% of the principal amount to be redeemed, plus accrued interest to the date of redemption:

| <u>Date</u> | <u>Principal Amount</u> |
|-------------|-------------------------|
|-------------|-------------------------|

\*

\* Final Maturity

Optional Redemption: The Bonds maturing on \_\_\_\_\_ 1, 20\_\_, and thereafter are subject to optional redemption prior to maturity on \_\_\_\_\_ 1, 20\_\_, or any date thereafter, on thirty (30) days' notice, in whole or in part, in the order of maturity as determined by the Sanitary District and by lot within a maturity, at face value together with a premium of \_\_\_% of par value, plus accrued interest to the date of redemption.

## SCHEDULE B

### *Form of Sophisticated Investor Letter*

\_\_\_\_\_, 2013

Muncie Sanitary District  
Muncie, Indiana

City of Muncie  
Muncie, Indiana

Bose McKinney & Evans LLP  
Indianapolis, Indiana

Ladies and Gentlemen:

We are this day purchasing from the Sanitary District of the City of Muncie, Indiana (the "Sanitary District") \$\_\_\_\_\_ in aggregate principal amount of its Sanitary District Revenue Bonds, Series 2013 B (the "Bonds"), issued pursuant to Resolution No. \_\_\_\_\_ adopted by the Board of Sanitary Commissioners of the Sanitary District on October 31, 2013 (the "Bond Resolution") and Indiana Code 36-9-25 and Indiana Code 36-1-12.5, each as amended. In consideration of the agreement of the Sanitary District to issue and sell the Bonds, and as an inducement thereto, we hereby make the following representations and warranties which you may rely upon in connection with this transaction.

1. We understand the Bonds represent an obligation of the Sanitary District payable solely from the Net Revenues of the Sanitary District (as defined in the Bond Resolution), on a parity with the Outstanding Parity Bonds (as defined in the Bond Resolution), and that the Sanitary District has no taxing authority which extends to the raising of revenue for the purpose of paying the Bonds.

2. We are a bank as defined in Section 3(a)(2) of the Securities Act of 1933, as amended. We are a sophisticated investor with extensive experience in purchasing and evaluating obligations similar to the Bonds. We have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risk of our investment in the Bonds and invest in or purchase securities similar to the Bonds in the normal course of our business, and we, and any investor accounts for which we are acting are able to bear the economic risk of our or its investment for an indefinite period of time. We confirm that neither the Corporation nor any person acting on its behalf has offered to sell the Bonds by, and that we have not been made aware of the offering of the Bonds by, any form of general solicitation or general advertising, including, but not limited to, any advertisement, article, notice



or other communication published in any newspaper, magazine or similar media or a broadcast over television or radio.

3. We have received such information concerning the financial affairs of the Sanitary District of the Sanitary District as we deem necessary in connection with investment in the Bonds, including a complete transcript of the proceedings regarding the authorization of the Bonds and the tax matters disclosure attached hereto; during the course of this transaction and prior to the purchase of the Bonds we have been provided with the opportunity to ask questions of and receive answers from the Sanitary District concerning the terms and conditions of the Bond offering, and to obtain any additional information needed in order to verify the accuracy of the information obtained to the extent that the Sanitary District possesses such information or can acquire it without unreasonable effort or expense; we are not relying on Bose McKinney & Evans LLP for information concerning the financial status of the Sanitary District, or the ability of the Sanitary District to honor its financial obligations or other covenants under the Bonds.

4. We represent to you that we are purchasing the Bonds for investment for our own account and not with the present view of reselling or otherwise disposing of all or any part thereof, and we will not sell, convey, pledge or otherwise transfer the Bonds without prior compliance with applicable registration and disclosure requirements of state and federal securities laws.

Sincerely,

[BANC OF AMERICA PUBLIC CAPITAL CORP]

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_